



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

I note that the landlord appeared with a translator and it was difficult throughout the hearing for the translator to understand me and for me to understand the translator.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee?

### Background and Evidence

I heard undisputed evidence that this tenancy began on May 1, 2012, monthly rent is \$800.00, and a security deposit is not being held by the landlord.

The landlord gave evidence that on November 5, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal delivery, listing unpaid rent of \$800.00 and unpaid utilities of \$840.54 as of November 1, 2012. The effective vacancy date listed on the Notice was November 16, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice.

I also have no evidence that the tenant owed the amount of \$840.54 as unpaid utilities as this amount contradicts the amount submitted by the landlord in other evidence.

The tenant submitted and the landlord agreed that the tenant paid 2 payments of rent since issuance of the Notice, that being \$250.00 on November 17, 2012 and \$600.00 on November 23, 2012. The receipts showed that the landlord used the phrase "for use and occupancy only" on both receipts, with an additional proviso that the tenant must vacate the rental unit by December 31, 2012.

The landlord reaffirmed at the hearing that she would like the tenant to have vacated by December 31, 2012 and that the tenant had fully paid rent by the end of November.

The tenant acknowledged owing this amount when the Notice was issued and that he had not applied for dispute resolution.

### Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or apply to dispute the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also find that the landlord has established a total monetary claim of \$50.00 comprised of the \$50.00 filing fee paid by the landlord for this application as the landlord has acknowledged that the tenant had made a full payment of rent and unpaid utilities by the end of November.

### Conclusion

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$50.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The landlord is at liberty to make an application for any unpaid rent for December 2012, or any other month for which the tenant has not paid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act* and is being mailed to both the applicant and the respondent.

Dated: December 18, 2012.

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Residential Tenancy Branch