



# Dispute Resolution Services

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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.

### *Preliminary Issues:*

#1-The landlord gave evidence that the female tenant, who was not in attendance, was served with the application for dispute resolution via registered mail December 14, 2012. The tenant said that the female tenant vacated the rental unit in May 2012. I therefore have excluded the female tenant's name from any orders which may be issued in this matter as I had no proof that the female tenant remained in the rental unit and was therefore served with a notice of this hearing.

#2-The tenant was warned multiple times that he should refrain from interrupting the telephone conference call hearing; however, the tenant continued with his interruptions and I placed him on the system's mute mode, meaning that he could hear the

proceedings but could not verbally participate. However, the hearing was nearing its completion by this point.

### 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 and to recover the filing fee?

### Background and Evidence

There was a dispute as to when this tenancy began, with the tenancy agreement showing it began on March 1, 2012, with a monthly rent of \$650.00 and that no security deposit was paid.

The tenant said he moved into the rental unit in September 2011 and that he paid a security deposit of \$300.00. The tenant agreed that monthly rent was \$650.00

The landlord gave evidence that on November 28, 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 \$850.00 as of October 1, 2012. The effective vacancy date listed on the Notice was December 8, 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.

The landlord's written evidence shows that the tenant had a rent deficiency of \$200.00 for September 2012, and no payments of rent for October, November, December 2012, and January 2013, for a total of \$2800.00.

The landlord's agent said this was incorrect information and requested an amendment to the written evidence, saying that the tenant had a rent deficiency of \$200.00 for October 2012, and did not pay rent for November, December, 2012, or January 2013, for a total of \$2150.00.

Initially the tenant said he received the Notice and subsequently in the hearing, he said he had not received the Notice. Due to the tenant's contradictions, I found I could not rely on the truthfulness of his testimony.

The tenant said that he had been paying rent in cash, but had no receipts as the landlord would not issue cash receipts. The tenant also confirmed that he had not applied to dispute the Notice.

### Analysis

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

I accept the landlord's request to amend their application to reduce the amount of unpaid rent claimed. I also find that the landlord listed an incorrect date on their 10 Day Notice issued to the tenant, that the amount of unpaid rent listed was as of November 1, 2012, and not October 1, 2012, and pursuant section 62 of the Act, I allow an amendment to that date as the issuance date of the Notice conforms to the November 1, 2012, date.

Due to the above, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not have evidence that he paid the outstanding rent or did not apply to dispute the Notice within five days of service. The tenant 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 proven a total monetary claim of \$2200.00 comprised of outstanding rent of \$2150.00 through January, 2013, and the \$50.00 filing fee paid by the landlord for this application.

### 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 \$2200.00, 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.

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: January 14, 2013

