



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

### Introduction

This application was brought by the landlord on January 4, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on December 6, 2012. The landlord also sought a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a monetary award as requested.

### Background and Evidence

This tenancy began on or about May 1, 2012. Rent is \$575 per month and the landlord holds a security deposit of \$287 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of December 6, 2012 had been served when the tenant had not paid the rent due on December 1, 2012.

The tenant remained in the rental unit at the time of the hearing and, in the interim, the December rent remains unpaid and the tenant has not paid the rent due on January 1, 2013.

The tenant stated that he had offered to pay the rent, but on the condition that he would be permitted to remain in the rental unit as he would otherwise need the money for a new tenancy. The landlord had declined to continue the tenancy.

The landlord requested an Order of Possession and the monetary award for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the amount owed.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was December 16, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a monetary award for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the balance.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent for December 2012	\$ 575.00
Rent for January 2013	575.00
Filing fee	50.00
Sub total	\$1,200.00
Less retained security deposit (no interest due)	- 287.00
<b>TOTAL</b>	<b>\$ 913.00</b>

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$913.00** for service on the tenant.

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*.

Dated: January 24, 2013

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Residential Tenancy Branch

