



# Dispute Resolution Services

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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 March 7, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on February 25, 2013. 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.

Despite having been served with the Notice of Hearing sent by registered mail on March 8, 2013, the tenant did not call in to the number provided to enable her participation in the telephone conference call proceeding. Therefore, it proceeded in her absence.

### Issue(s) to be Decided

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

### Background and Evidence

This one-year fixed term tenancy began on June 1, 2012. Rent is \$1,500 per month and the landlord holds a security deposit of \$750 paid on May 31, 2012.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had had a \$50 rent shortfall from December 2012 and had failed to pay the rent for January, February and March 2013.

The landlord stated that, to all appearances, the tenant was in the process of vacating the rental unit during the latter part of March 2013 although she had left behind considerable refuse and some items of limited value.

Therefore, the landlord requested the Order of Possession to ensure his right to take possession of the rental unit to begin cleaning and repairs in preparation for searching for new tenants.

The landlord also confirmed that the unpaid rents remain outstanding and requested a monetary award for the rent, recovery of the filing fee and authorization to retain the security deposit in set off against the balance 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 tenants 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 March 10, 2013.. (As the notice to end was served by posting, it is deemed under section 90 of the *Act* to have been received three days later with an effective date 10 days after receipt.)

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on April 5, 2013.

In the absence of any evidence to the contrary, I accept the evidence of the landlord that the tenant has a rent shortfall of \$50 from December 2012 and has not paid the rent for January, February and March 2013.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant. In addition, as authorized under section 72 of the *Act*, I find that the landlord may retain the security deposit in set off.

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

Rent shortfall from December 2012	\$ 50.00
Rent for January 2013	1,500.00
Rent for February 2013	1,500.00
Rent for March 2013	1,500.00
Filing fee	50.00
Sub total	\$4,600.00
Less retained security deposit (no interest due)	- 750.00
<b>TOTAL</b>	<b>\$3,850.00</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 at 1 p.m. on April 5, 2013.

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 **\$3,850.00** 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: April 03, 2013

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Residential Tenancy Branch

