



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR and FF

### Introduction

This application was brought by the landlord on March 21, 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 March 12, 2012. The landlord also sought a monetary award for the unpaid rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

At the commencement of the hearing, the landlord advised that the tenant had vacated the rental unit on or about March 24, 2012 after having advised her by letter of March 5, 2013 that he would do so by March 31, 2013. Therefore, the landlord no longer required the Order of Possession.

### Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to a monetary award for the unpaid rent and filing fee.

### Background and Evidence

This tenancy began on October 1, 2012. Rent was \$700 per month and the landlord holds a security deposit of \$350 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence she had served the Notice to End Tenancy of March 12, 2013 after the tenant had a rent shortfall of \$300 for the rent due on January 1, 2013 and had paid none of the \$700 rent due for each of February and March 2013.

The landlord stated that, while the tenant had vacated as stated in his letter of March 5, 2013 which was submitted into evidence, he had not paid the outstanding rent as he stated he would do in his letter. The tenant left without providing a forwarding address or returning the keys to the rental unit which was left in need of cleaning and repair.

Therefore, the landlord has requested the monetary award for the unpaid rent and filing fee.

### Analysis

Section 26 of the *Act* states that:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

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 and he did, in fact, move out in compliance with the Order.

Section 67 of the *Act* authorizes the director’s delegate to determine an amount owed by one party to a rental agreement to the other and to order payment. Accordingly, I find that the tenant owes to the landlord the outstanding rent as claimed.

I also award the landlord recovery of the filing fee for this proceeding and, as empowered by section 72 of the *Act*, I authorize the landlord to retain the security deposit in set off against the unpaid rent.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for January 2013	\$300.00
Rent for February 2013	700.00
Rent for March 2013	700.00
Filing fee	<u>50.00</u>
Sub total	\$1750.00
Less retained security deposit (No interest due)	<u>- 350.00</u>
<b>TOTAL</b>	<b>\$1,400.00</b>

### Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$1,400.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for monetary compensation for damage to the rental unit ascertained when she regained possession of it.

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 17, 2013

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Residential Tenancy Branch

