



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devonshire Properties Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR and FF

### Introduction

Application was made by the landlord on April 25, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on April 9, 2013. In addition, as authorized by section 64(3)(c) of the *Act*, I have permitted the landlord to amend the application to request a monetary award for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing on April 29, 2013, the tenant did not call in to the number provided to enable his participation in the telephone conference call proceeding. 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 May 21, 2013 without notice and without having provided a forwarding address. Therefore, he withdrew the request for the Order of Possession.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

### Background and Evidence

This tenancy began on August 1, 2013. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid at the beginning of the tenancy.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of April 9, 2013 when the tenant had failed to pay the rent due on April 1, 2013, the fourth time late rent had required such notice.

The landlord submitted into evidence a copy of an email from the tenant dated April 23, 2013 in which he asks for 10 more days to pay the rent. The landlord replied April 25, 2013 asking if the tenant would be paying for both April and May 2013. The tenant confirmed that he would be paying both but assurance of reinstatement of the tenancy was declined due to the tenant's history of late payment.

The landlord gave evidence that he had spoken by telephone with the tenant on May 10, 2013, but the tenant refused to confirm that he would be paying the outstanding rent.

### 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 April 22, 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 later.)

I accept the evidence of the landlord that the tenant remained in the rental until about May 21, 2013 and vacated without notice or providing a forwarding address, leaving the landlord insufficient time to find a new tenant in May 2013. I further accept the evidence of the landlord that the tenant did not pay the rent for April or May 2013.

Therefore, I find that the landlord is entitled to a monetary award for the two months' rent.

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 further find that the landlord may retain the security deposit in set off against the unpaid rent.

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

Rent for April 2013	\$1,200.00
Rent for May 2013	1,200.00
Filing fee	50.00
Sub total	\$2,450.00
Less retained security deposit (no interest due)	- 600.00
<b>TOTAL</b>	<b>\$1,850.00</b>

### Conclusion

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 **\$1,850.00** 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: May 23, 2013

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Residential Tenancy Branch

