



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR and FF

### Introduction

This hearing was convened on an application made by the landlord on April 16, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on March 13, 2013. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on April 19, 2013, 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.

### 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 tenancy began on or about October 15, 2011. Rent is \$950 per month and the landlord stated that the tenant had applied the security deposit to another purpose and it is no longer available for set off.

During the hearing, the landlord stated that he had owned the rental building with a partner until October 2012 when he purchased the partner's share and became sole owner.

The landlord stated that he had served the Notice to End Tenancy of March 13, 2013 after the tenant had failed to pay any of the rent for a year. The landlord stated that he had requested the tenant to move out in October 2012 and that the tenant had promised to do so, but continually postponed the departure date. The tenant remained in the rental unit at the time of the hearing and still has made no rent payments.

The landlord had requested \$8,000 in unpaid rent but has provided no tenant ledger or detailed accounting of the unpaid rent.

The landlord requested an Order of Possession and a Monetary Order for the unpaid rent and filing fee.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the legislation or rental agreement.

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. 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) & (6) 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 23, 2013.

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

However, in the absence of any documentary or corroborating evidence as to the precise amount of rent owed, the request for a Monetary Order for the unpaid is dismissed with leave to reapply when the landlord has assembled evidence to substantiate the amount claimed. For the same reason, I decline to award the filing fee on the present application.

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.

The landlord's claim for a Monetary Order is dismissed with leave to reapply.

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 15, 2013

---

Residential Tenancy Branch

