



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on December 8, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on December 18, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 7, 2014 and continue on a month to month basis. The rent is \$950 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$475 at the start of the tenancy. The tenant(s) failed to pay the rent

for the months of November and December. The landlord served the 10 day Notice to End Tenancy on the Tenant on December 8, 2014.

On December 18, 2014 the tenant paid the arrears of \$1235. The landlord accepted the payment for “use and occupation only.” The tenant has not paid the rent for January. The tenant(s) continue to live in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. At the time the 10 day Notice to End Tenancy was served on the tenant there is outstanding rent. The Notice is void if the arrears are paid in full within 5 days. If the arrears are paid after the 5 day period, the landlord has an election. The landlord can accept the payment for “use and occupation only” in which case the tenancy ends at the end of the rental payment period. Alternatively, the landlord can accept the payment unconditionally thereby reinstating the tenancy.

I determined the payment was accepted for “use and occupation only.” As a result the landlord has not reinstated the tenancy and the tenancy comes to an end on December 31, 2014. Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

**Accordingly, I granted the landlord an Order for Possession on 2 days notice.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I dismissed the landlord's claim for non payment of rent for November and December as the arrears have been paid. The landlord has the right to file another application to

claim not non payment of rent for January 2015. However, that claim was not a part of this application.

**I order that tenant pay to the landlord the sum of \$50 for the cost of the filing fee such sum may be deducted from the security deposit.**

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 08, 2015

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Residential Tenancy Branch

