



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      Tenant   O, FF  
                                 Landlord   OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent and compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant filed for other considerations and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by personal delivery on June 18, 2011 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by personal delivery on June 14, 2011 in accordance with section 89 of the Act.

It should be noted the Tenant's application was dated June 10, 2011. The 10 Day Notice to End Tenancy indicates that a Tenant can file an application to dispute the Notice to End Tenancy up to 5 days after the Tenant receives the 10 Day Notice to End Tenancy. In this situation the 10 Day Notice to End Tenancy was posted on the Tenants door on June 1, 2011, Section 90 of the Act deems the Notice to be received 3 days following or June 4, 2011, therefore the Tenant would have to have made an application on or before June 9, 2011 in order to dispute the 10 Day Notice to End Tenancy. The Tenant's application is dated June 10, 2011 and therefore is considered late; consequently the Tenant's application is dismissed without leave to reapply on grounds that the application did not meet the time limits as set out in the Act or on the 10 Day Notice to End Tenancy.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

## Issues to be Decided

### Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Has the Landlord had a loss or damage and if so how much?
5. Is the Landlord entitled to compensation for damage of loss?

## Background and Evidence

This tenancy started on November 1, 2005 as a fixed term tenancy and then it renewed as a month to month tenancy to the present time. Rent is \$1,200.00 per month payable in on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 October 21, 2005.

The Landlord said that the Tenant did not pay \$1,200.00 of rent for May, 2011 and \$1,200.00 rent for June, 2011 when it was due and as a result, on June 1, 2011, she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 1, 2011 on the door of the Tenant's rental unit. The Landlord also said the Tenant has unpaid rent of \$1,200.00 for July, 2011.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has told the Landlord that he wants to continue the tenancy. The Landlord said she has tried to work with the Tenant with payment arrangements for the unpaid rent, but she has been unsuccessful getting the unpaid rent paid, therefore the Landlord requested an Order of Possession dated for July 31, 2011. The Landlord continued to say if the Tenant pays all the unpaid rent prior to July 31, 2011 and the August, 2011 rent of \$1,200.00 on time the Landlords are willing to continue the tenancy.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said that he does not dispute the rent is unpaid for May, June and July, 2011 but requested the opportunity to pay the unpaid rent and continue the tenancy.

The Landlord said she would like to have confirmation in writing by July 15, 2011 that the unpaid rent would be paid by July 31, 2011. If the Tenant can do this then the Landlords are willing to continue the tenancy. If the unpaid rent is not paid by July 31,

2011 the Landlord will not continue the tenancy and the Landlord requested an Order of Possession with an effective vacancy date of July 31, 2011.

The Tenant said that he filed the application on June 10, 2011 on the instructions of an officer of the Residential Tenancy Branch; therefore he does not think it should be considered as a late filing of the application.

## Analysis

Although the Tenant said he followed the instructions given to him by the Residential Tenancy Branch it does not change the fact that the application was filed on June 10, 2011 and it was required to be filed by June 9, 2011. This information was on the 10 Day Notice to End Tenancy which he received on June 1, 2011 and on Residential Tenancy Branch hand outs and on the web site. I find the Tenant's application to be late and therefore I dismiss the application without leave to reapply. As well since the Tenant has been unsuccessful in this matter he is ordered to bear the cost of the filing fee of \$50.00 that he has already paid.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on June 4, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 9, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution by June 9, 2011. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect on July 31, 2011.

I also find that the Landlord is entitled to recover unpaid rent for May, 2011, in the amount of \$1,200.00, unpaid rent for June, 2011 in the amount of \$1,200.00 and unpaid rent for July, 2011 in the amount of \$1,200.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:



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|                    |            |             |
|--------------------|------------|-------------|
| Rent arrears:      | \$3,600.00 |             |
| Recover filing fee | \$ 50.00   |             |
| Subtotal:          |            | \$3,650.00  |
| Balance Owing      |            | \$ 3,650.00 |

## Conclusion

An Order of Possession effective July 31, 2011 and a Monetary Order in the amount of \$3,650.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without 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*.

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Residential Tenancy Branch