



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for cause, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This hearing was originally scheduled for August 8, 2011 and reconvened to this date to allow both parties additional time to submit evidence.

This fixed term tenancy began October 1, 2010 with monthly rent of \$650.00 and the tenant paid a security deposit of \$325.00. On June 9, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has been repeatedly late paying rent.
- The tenant has allowed an unreasonable number of occupants in the unit/site.

The landlord testified that rent is due on the first of the month and that the tenant is continually late when paying the rent or does not pay the rent in full. The landlord stated that either he or his son go to the property on the first of each month to collect the rent from the tenant. The landlord stated that when the ministry was paying the tenant's rent there had been no problems but now that the tenant is responsible for the rent there are issues every month. The landlord stated that the tenant has still not paid the July or August 2011 rent.

The landlord stated that:

- May 2011 rent was paid on the 15<sup>th</sup> of the month

- April 2011 rent was paid \$400.00 on the 5<sup>th</sup> and \$200.00 on the 20<sup>th</sup> of the month with \$50.00 owing
- June 2011 rent was received on June 9, 2011

The landlord in this application is seeking an order of possession for cause and \$50.00 compensation for the filing fee.

The tenant testified that her rent was not been paid late in April, May or June 2011 and that the landlord agreed to allow the tenant to pay rent in two instalments for April 2011. The tenant maintains that rent was only late as the landlord did not pick it up on the first of each month and that the landlord has made it very difficult to get him the rent on time as he does not respond to her phone calls.

The tenant is adamant that the landlord has not reimbursed her for a \$245.00 overpayment of rent in December 2010 by the ministry and the landlord directly refuted this testimony stating that he has reimbursed the tenant in cash. At the time of the August 8, 2011 hearing the tenant had not paid the July or August 2011 rent and was advised to do so immediately however the July and August 2011 rent remains unpaid. The tenant stated that the rent has remained unpaid as the landlord makes it difficult to get the rent to him.

The tenant referred to numerous issues with the rental unit however this is an application by the landlord and the tenant was advised that she had to file her own application to proceed with a claim against the landlord.

Both parties accused the other of being untruthful in their testimony and often directly contradicted one another's testimony. The tenant also accused the landlord of using foul language when speaking to her and this the landlord vehemently denies.

### Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for cause: the tenant has been repeatedly late paying rent. The tenant did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession for cause.

The evidence provided by the tenant does not meet the burden of proving that rent has been paid on time for the months of April, May and June 2011. The receipts submitted by the tenant reflect dates other than the first of each month and this evidence in fact supports the landlord's claim of late rent.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenants. This Order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord is entitled to recovery of the \$50.00 filing fee and I grant the landlord a monetary order for that amount.

If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 15, 2011.

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Residential Tenancy Branch