



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable her to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered into written evidence a copy of a Proof of Service form signed by the tenant attesting to the fact that the landlord handed her a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on September 16, 2011 at 2:00 p.m. The landlord also entered into written evidence a copy of a signed statement by the tenant confirming that the landlord handed her a copy of the landlord's dispute resolution hearing package on September 26, 2011. The landlord also gave oral testimony attesting to the accuracy of the above service of these documents to the tenant. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced initially as a fixed term tenancy on April 1, 1992. Since the expiration of the initial term, the tenancy has continued as a month-to-month tenancy. Monthly rent was set at \$635.00 as of August 1, 2011, payable in advance on the first of each month. The landlord continues to hold the tenant's \$280.00 security deposit paid on or about April 1, 1992.

The landlord issued the 10 Day Notice for non-payment of \$610.00 owing as of September 16, 2011. The landlord applied for a monetary award of \$1,270.00, an amount which included unpaid rent for September and anticipated loss of rent for October 2011. Since applying for dispute resolution, the landlord testified that the tenant paid \$585.00 on September 27, 2011. The landlord said that she accepted this payment from the tenant and issued a receipt for use and occupancy of the rental unit only. The landlord said that \$25.00, the amount of the late fee for September 2011 remains owing, as well as unpaid rent of \$635.00 for October 2011 and a \$25.00 late fee for October 2011.

### Analysis – Order of Possession

I find that this tenancy was not continued by the landlord's acceptance of the tenant's September 27, 2011 payment for use and occupancy only.

The tenant failed to pay the September 2011 rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 26, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Analysis – Monetary Award

Based on the undisputed evidence of the landlord, I find that the landlord is entitled to a monetary award of \$635.00 for unpaid rent for October 2011. In accordance with the terms of the Residential Tenancy Agreement for this tenancy, I also find that the landlord is entitled to a monetary award of \$50.00 for two late fees because she did not pay rent for September or October 2011 on time.

I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of this monetary award. Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, late fees and the filing fee for this application, and to retain the tenant's security deposit plus interest:

<b>Item</b>	<b>Amount</b>
Late Fee September 2011	\$25.00
Unpaid October 2011 Rent	635.00
Late Fee October 2011	25.00
Less Security Deposit plus Interest (\$280.00 + \$79.86 = \$359.86)	-359.86
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$375.14</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 25, 2011

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Residential Tenancy Branch