



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Witness for the Landlord stated that she personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on October 24, 2011. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent, loss of revenue, and late fees; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on March 01, 2010; that the Tenant is required to pay monthly rent of \$825.00 by the first day of each month; that the Tenant did not pay any rent for October or November of 2011; and that the Tenant is still occupying the rental unit.

The Agent for the Landlord stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 13, 2011, on the door of the rental unit on October 02, 2011.

The Landlord is seeking late fees of \$40.00 as the Tenant did not pay rent when it was due in October and November of 2011. The tenancy agreement, which was submitted in evidence, provides for a fee of \$20.00 when rent is not paid when it is due.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$825.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for October or November of 2011. As she was required to pay rent on October 01, 201, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$825.00 rent for October.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord posted a Notice to End Tenancy on the Tenant's door on October 02, 2011, which directed the Tenant to vacate the rental unit by October 13, 2011, pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on October 05, 2011.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on October 05, 2011, I find that the earliest effective date of the Notice was October 15, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 15, 2011.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on October 15, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

As the Tenant did not vacate the rental unit on October 15, 2011, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between October 15, 2011 and October 31, 2011, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the period between November 01, 2011 and November 15, 2011 as she remains in possession of the rental unit, at a daily rate of \$27.50, which equates to \$412.50.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that her continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of November of 2011. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it is likely to experience between November 16, 2011 and November 30, 2011, which is \$412.50.

As the Tenant did not pay her rent when it was due on October 01, 2011 and the tenancy agreement requires the Tenant to pay a fee of \$20.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$20.00 for the month of October. As the tenancy had technically ended by November 01, 2011, I find that the Tenant was not obligated to pay rent by that date and I dismiss the Landlord's application for a late fee for November.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,720.00, which is comprised of \$1,650.00 in unpaid rent/loss or revenue; a \$20.00 late fee; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,720.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: November 15, 2011.

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Residential Tenancy Branch