



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR and FF

### Introduction

This application was brought by the landlord on October 2, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on September 19, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

### Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to a an Order of Possession and monetary award as requested.

### Background and Evidence

According to the landlord, this tenancy has been ongoing for about 15 years, with the latest rental agreement having been signed in 2009. The tenant stated that the tenancy has been ongoing for 25 years. Rent is \$1,400 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of September 19, 2012 had been served after the tenant had failed to pay rent due on March 1, 2011 and every month since, an arrears that has since grown to 21 months including November 2012.

The tenant concurred that he has not paid the rent as claimed by the landlord but stated that he had intentionally withheld rent because of needed repairs to the rental unit.

The landlord made explanation that action on the overdue account had been delayed as the property had been managed by his elderly mother who has since passed. He said she had served a Notice to End Tenancy for unpaid rent about a year previously, but did not know how to proceed to enforce it.

He said he took over management of the property in July of 2012 and is attempting to bring matters to conclusion.

The landlord stated that while more was owed, he limited his claim to the \$25,000 maximum permitted under the *Residential Tenancy Act*.

In consultation with the tenant, the landlord agreed to extend the tenancy to November 30, 2012.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the legislation or rental agreement.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on November 30, 2012 as requested.

I further find that the landlord is entitled to a Monetary Order for the unpaid to a maximum of \$25,000. The actual amount owed would have been \$1,400 x 21 months which equals \$29,400.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on November 30, 2012.

The landlord's copy of this decision is also accompanied by a Monetary Order for **\$25,000**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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 06, 2012.

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Residential Tenancy Branch