



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession for unpaid rent and a Monetary Order for loss of rent and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 19, 2009. Copies of the mail receipts were entered into evidence by the landlord. Tenants were deemed to be served the hearing documents on March 24, 2009, the fifth day after they were mailed as per section 9(a) of the *Act*.

The landlord appeared, gave affirmed testimony, and was provided the opportunity to present her evidence orally, in writing, and documentary form.

The tenant did not appear despite being served the hearing documents in accordance with the *Act*.

### Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession under section 55 of the *Act*.
- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss.

- Whether the landlord is entitled to monetary compensation under section 72(1) of the *Act* to recover filing fee from the tenant for the cost of this application.
- Whether the landlord is entitled to keep all or part of the security deposit under section 38(1)(d) of the *Act*.

## Background and Evidence

The tenancy began as a fixed term tenancy on July 16, 2007 and then switched over to a month to month tenancy in 2008. Rent is \$700.00 per month payable on the 1<sup>st</sup> of each month. The tenant paid a security deposit in the amount of \$350.00 on August 1, 2007.

The landlord testified that the tenant's rent is in arrears of \$2,500.00 from October 2008 to March 2009 as follows:

DESCRIPTION	CHARGE	CREDIT	BALANCE DUE
Oct. 1, 2008 Rent	\$700.00		\$700.00
Nov. 1, 2008 Rent	700.00		1400.00
Nov. 22, 2008 Payment		1,000	400.00
Dec. 1, 2008 Rent	700.00		1,100.00
Jan. 01, 2009 Rent	700.00		1,800.00
Jan. 31, 2009 Payment		700.00	1,100.00
Feb. 01, 2009 Rent	700.00		1,800.00
Mar. 01, 2009 Rent	700.00		<b>\$2,500.00</b>

On March 3, 2009 the landlord issued a 10 day notice to end tenancy listing a move out date of March 16, 2009, and slid the notice under the tenant's door March 3, 2009 after 5:00 p.m. The landlord noted that she listed the date the rent was due on the 10 day notice to end tenancy, as 01/12/08, which is when she thought the rent really began to fall behind.

The 10 day notice to end tenancy is deemed to have been served March 6, 2009, 3 days after it was slid under the tenant's door, pursuant to section 90 of the *Residential Tenancy Act*, and deemed to be effective March 16, 2009, 10 days after service.

The landlord filed an Application for Dispute Resolution on March 12, 2009, received the hearing package via e-mail on March 16, 2009, and sent the hearing documents to the tenant via registered mail on March 19, 2009. The landlord testified that the hearing documents were sent to the tenant at the rental unit address, via registered mail, copies of the Canada Post receipt were entered into evidence.

The landlord stated that she has issued 10 day notices before but didn't follow through with requesting a hearing because she knew the tenant was living in the one bedroom rental unit, with her four children, and that the tenant was going through a difficult time. The landlord stated that the tenant has now failed to pay April 2009 rent and so the landlord wishes to proceed with an Order of Possession and a monetary claim.

## Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act*

and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

**Order of Possession.** I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the tenant failed to pay the rent within 5 days after receiving this notice, and that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

**Claim for unpaid rent.** The landlord claims loss of rent of \$2,500.00 as listed above, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

**Filing Fee \$50.00.** I find that the landlord has succeeded in large and that she should recover the filing fee from the tenants.

**Security deposit.** I find that the landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset against the tenant's security deposit of \$350.00 plus interest of \$7.49 for a total of \$357.49.



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## Conclusion

I find that the landlord is entitled to an Order of Possession for which a formal order has been issued. This Order must be served on the tenant and is enforceable through the Supreme Court of British Columbia.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Unpaid Rent (November 2008 to March 2009)	\$2,500.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$2,550.00</b>
Less Security Deposit and Interest	-357.49
<b>TOTAL MONETARY ORDER IN FAVOR OF THE LANDLORD</b>	<b>\$2,192.51</b>

I hereby grant a Monetary Order of \$2,192.51 in favor of the landlord. This Order must be served on the respondent and is enforceable through the Provincial Court of British Columbia.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order, to be served 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: April 08, 2009.

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Dispute Resolution Officer