



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent and utilities, for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the Tenant by registered mail on April 08, 2009. The Tenant confirmed he had received them on April 15, 2009.

Both parties appeared, and were provided the opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

### Issues(s) to be Decided

- Are there arrears of rent and utilities and if so, how much?
- Is the Landlord entitled to keep all or part of the security deposit and interest?
- Is the Landlord entitled to a Monetary Order for compensation for loss of income for May's rent?

- Is the Landlord entitled to recover filing fees for the cost of the application?
- Is the Landlord is entitled to an Order of Possession?

## Background and Evidence

This tenancy started on August 01, 2008. Rent is \$640.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$320.00 on August 01, 2008. The Landlord issued a 10 Day Notice to End Tenancy on March 07, 2009 for unpaid rent. This notice was pushed under the Tenants' door. The Tenant disputes that the notice was served correctly and called his witness to describe how the notice was found. The witness testifies that when he came home with the Tenant on March 07, 2009 they entered the rental unit and the witness stood on the envelope containing the 10 Day Notice. He handed this to the Tenant. Therefore, I am satisfied under s. 88(g) of the *Act* that the Notice was left in a conspicuous place where the Tenant could find it when he returned home.

The Landlord testifies that the Tenant paid partial rent for October and November, 2008 of \$500.00. No rent has been paid for December, January, February, March and April. The rent arrears are \$ 3,200.00. The Tenant testifies that he withheld the rent because he had carried out some painting and decorating work for the previous management company and they owed him the sum of \$1650.00. The Tenant explained that he had notified the company in writing of the money owed to him. The Tenant is willing to come to an agreement with the management company over the rent he owes being offset against what he is owed for work he carried out for the previous management company. However, the agent for the Landlords explains that she does not have the authority at this hearing to make that decision. The Landlord has applied for a monetary Order for loss of revenue for May of \$640.00

## Analysis

The *Residential Tenancy Act* pursuant to s. 26(1) states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this *Act*, the regulations or the tenancy agreement. Therefore I find the Tenant is in breach of the agreement and uphold the Landlords 10 Day Notice.

The Landlord requested and I find pursuant to s. 55(1)(b) of the *Act* that she is entitled to an Order of Possession to take effect on May 15, 2009. I also find that the Landlord is entitled to recover rent arrears for October and November of \$280.00 and rent arrears for January, February, March and April to the sum of \$3,200.00. However, I find that the landlord is not entitled at this time to claim a loss of revenue for May, 2009 as they have agreed to an eviction date of May 15, 2009. If the Landlord and Tenant can not reach an agreement or if the Tenant does not pay a pro rata rent for May the landlords may apply for dispute resolution at that time. As the Landlord has been successful in this matter, she is also entitled to recover the \$50.00 filing fee for these proceedings.

I order the Landlord pursuant to s. 38(4)(b) of the *Act* to keep the Tenant's security deposit and any accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Partial rent arrears October, November	\$280.00
Filing fee	\$50.00
Less security deposit and accrued interest	-\$322.01)
Total	<b>\$3,207.99</b>

## Conclusion



# Dispute Resolution Services

Page: 4

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An order of Possession has been issued to the Landlord. A copy of the Orders must be served on the Tenant and the Tenant must vacate the rental unit **no later than May 15, 2009**. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary order in the amount of **\$3,207.99** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount of the order 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: May 01, 2009.

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Dispute Resolution Officer