



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent to the tenant by registered mail on April 09, 2009. They are deemed to have been served five days after posting. I find that the tenants were properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the tenant's absence.

### Issues(s) to be Decided

- Whether the Landlord is entitled to an Order of Possession?
- Are there arrears of rent 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 to recover the filing fee?

### Background and Evidence

This tenancy started around January 15, 2006. Rent was \$900.00 per month payable on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$400.00 on February 01, 2006. The landlord states that the tenants have not paid their rent for February, March,



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April and May, 2009 totalling \$3,600.00. The landlord issued a 10 Day Notice for unpaid rent on March 28, 2009 and posted this on the tenant's door. As the tenants did not respond to this notice by either paying the rent owed or by moving out of the rental unit on the day requested the landlord filed an application for dispute resolution.

The landlord states that he believes that one of the tenants have moved out as the lock to the unit was broken and this tenant asked the landlord to replace the lock. I have explained to the landlord that if he replaces the lock that he must give the remaining tenant a key to the new lock until the dispute resolution process is resolved and an Order of Possession has been enforced.

## Analysis

**Order of Possession** – I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an Order of Possession.

**Monetary Order** - In the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for February, March, April and May, 2009 of **\$3,600.00**. As the landlord has been successful in this matter, he is also entitled to recover his **\$50.00** filing fee for this proceeding.



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I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears. The landlord will receive a monetary order for the balance owing as follows:

Rent arrears	\$3,600.00
Less security deposit and accrued interest	-\$413.98
Total	<b>\$3,236.02</b>

## Conclusion

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 **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$3,236.02** 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 06, 2009.

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Dispute Resolution Officer