



# 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 were hand delivered to the tenant on April 21, 2009.

Both parties appeared, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

### Background and Evidence

This tenancy started on June 01, 2008. This is a month to month tenancy and rent is \$1,020.00 per month payable on the 1<sup>st</sup> of each month. The tenant paid a security deposit on June 01, 2008 of \$510.00.

The landlord testifies that the tenant has been repeatedly late with his rent and the landlord has issued the tenant with previous 10 Day Notices to End tenancy for unpaid rent in September and October, 2008 and in January and March 2009. In April, 2009 the tenant was again late with his rent and the landlord issued another 10 Day Notice for unpaid rent on April 02, 2009. On April 06, 2009 the tenant paid \$520.00 towards his rent and owes rent for May, 2009 of \$1,020.00. The landlord has also charged the tenant \$20.00 for each month the rent is late.

The tenant does not dispute the amount of rent owed and explained that the rent was late due to a medical condition which prevented him from working. He explained he had to wait six weeks for his workers compensation payments. Since then he has been laid off work and has started a temporary job but has not yet been paid.

## 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-** I find that the tenant does not dispute the amount of rent owed to the landlord of \$1,520.00. Based on this I uphold the landlords application for a Monetary Order for unpaid rent only. The landlord may retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears. The tenancy agreement in



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place does not state that a landlord may charge a tenant late fees. Therefore, the landlord is not entitled to recover \$20.00 for each month the rent is late.

**Recovery of the Filing Fee - \$50** – I find that the landlord has succeeded in large and that he should recover the filing fee from the tenant.

The landlords are entitled to a Monetary Order as follows:

Rent arrears	\$1,520.00
Less security deposit and accrued interest	(-\$514.47)
Total amount owing	<b>\$1,055.53</b>

## Conclusion

An Order of Possession has been issued to the landlord. A copy of the Order must be served on the tenant and the tenant must vacate the rental unit **two days** after service of this Order. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$1,055.53** 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 28, 2009.

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Dispute Resolution Officer