



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit. The Landlord said he served the Tenant in person on May 23, 2009 with the Application and Notice of Hearing in this matter. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in her absence.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on April 1, 2008. Rent is \$675.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$337.50 at the beginning of the tenancy. The Landlord said the Tenant's rent cheque for April 2009 was returned for non-sufficient funds and as a result, on April 13, 2009, he served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent dated April 13, 2009. The Landlord said the Tenant gave him a replacement cheque on April 17, 2009, however that cheque as well as the Tenant's rent cheque for May 2009 was returned for insufficient funds. The Landlord said that the Tenant has not paid rent for April, May and June, 2009.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount within 5 days or no later than April 18, 2009.



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I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. Consequently, pursuant to section 46(5) of the Act, she is conclusively presumed to have accepted that the tenancy would end on the effective date (10 days after she is deemed to receive it), or on April 23, 2009. The Landlord requested and I find pursuant to s. 55(2)(b) of the Act that he is entitled to an Order of Possession to take effect immediately.

I also find that the Landlord is entitled to recover rent arrears for April, May and June 2009 in the amount of \$2,025.00. Section 7 of the Regulations to the Act allows a Landlord to charge a late payment fee of no more than \$25.00 if the tenancy agreement contains a term to that effect. I find that the Parties' tenancy agreement does allow the recovery of a late fee and accordingly the Landlord is also entitled to recover \$75.00 in late fees as well as the \$50.00 filing fee for this proceeding. Pursuant to s. 38(4), of the Act, I order the Landlord to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$2,025.00
Late Fees:	\$75.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,150.00
Less: Security Deposit:	(\$337.50)
Accrued Interest:	<u>(\$3.80)</u>
BALANCE OWING:	\$1,808.70

## Conclusion

The Landlord's application for damages to the rental unit is dismissed with leave to reapply. An Order of Possession effective immediately and a monetary order in the amount of **\$1,808.70** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. 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: June 26, 2009.

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Dispute Resolution Officer