



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** OPR, MNR, MNSD, FF

## Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order as compensation for unpaid rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

## Issues to be decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act

## Background and Evidence

There is no written residential tenancy agreement in place for this month-to-month tenancy which began on or about June 1, 2008. Rent in the amount of \$800.00 is due and payable on the first day of each month, and a security deposit of \$400.00 was collected at the outset of tenancy.

In his application under "Details of the Dispute" the landlord sets out the following amounts of overdue rent in 2009:

\$ 10.00 – January

\$ 800.00 – February

\$ 675.00 – March

\$ 500.00 – April

\$ 800.00 – May

\$ 800.00 – June

Total: \$3,585.00

The parties agree that any rent paid was always paid in cash, and the landlord acknowledges that he did not consistently issue receipts.

The landlord personally delivered a 10 day notice to end tenancy for unpaid rent dated May 6, 2009 to each tenant. While both tenants acknowledge having been served and agree that no rent was paid subsequent to their receipt of the notices, they dispute the amount of rent deemed overdue. However, the tenants themselves submitted no evidence of a record of rent transactions.

The tenants state that the landlord had promised a rent concession in exchange for some painting in the unit. The landlord testified that this concession had been granted and predates the period when rent became overdue, as set out above.

Copies of receipts submitted into the evidence by the landlord document as follows:

March: that rent in the amount of \$125.00 was paid (consistent with the above breakdown)

April: that rent in the amount of \$300.00 was paid (\$180.00 + \$120.00)  
(consistent with the above breakdown)

May: that rent in the amount of \$100.00 was paid (not credited to the tenants in the above breakdown)

The tenants acknowledge having each received copies by registered mail of pictures submitted into evidence by the landlord. These pictures show assorted belongings and refuse accumulated by the tenants outside the rental unit. However, the tenants state they did not receive copies of the above receipts which the landlord states were sent by registered mail to each. However, the landlord states that only one of these latter

packages was returned to him as unclaimed. The landlord submitted all four sets of Canada Post tracking numbers for the registered mailings of pictures and receipts.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which would be May 16, 2009. Accordingly, I find that the landlord is entitled to an order of possession.

Where it concerns a monetary order, I find that the landlord has established a claim for unpaid rent in the amount of \$3,485.00 (\$3,585.00 - \$100.00). As the outcome of this application favours the landlord I also find that he is entitled to recovery of the \$50.00 filing fee. I order the landlord to retain the security deposit of \$400.00 plus interest of \$3.51, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$3,131.49 (\$3,535.00 - \$403.51).

### **Conclusion**

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 of the Act for **\$3,131.49**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 18, 2009

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Dispute Resolution Officer