



# 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 was sent to the tenant by registered mail on June 16, 2009. The Canada Post tracking system shows that the tenant collected these on June 19, 2009.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord 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 December 01, 2008. This is a fixed term tenancy for one year ending on November 30, 2009. Rent is \$685.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$342.50 on December 01, 2008.

The tenant only paid a portion of rent for April, 2009 which left \$233.00 outstanding. The tenant did not pay rent for May of \$685.00 and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent on May 20, 2009. This was posted on the tenants' door and the landlord has provided a proof of service in their evidence. The tenant has not paid rent for June and July, 2009. On July 02, 2009 the tenant paid \$120.00 towards the rent arrears. The total amount of outstanding rent is \$2,168.00.

The tenancy agreement states that a landlord is able to recover \$25.00 for insufficient funds and the landlord has applied to recover this amount for April, 2009 as costs incurred by the landlord.

The landlord has requested to retain the tenants' security deposit in partial payment of the rent arrears and has requested an Order of Possession.

## Analysis

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.

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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 to take effect three days after service of the Order on the tenant.

The tenant did not appear for today's hearing and has not disputed the fact, despite opportunity to do so, that he owes the landlord rent to the sum of \$2,168.00 plus \$25.00 for insufficient funds fees. Based on this I uphold the landlords application for a Monetary Order. The landlord may retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears.

As the landlord has been successful with their application I find that they are entitled to recover the filing fee for the cost of this application.

The landlords are entitled to a Monetary Order as follows:

Outstanding rent April, May, June, July,	\$2,168.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$342.94)
Total amount due to the landlord	<b>\$1,900.06</b>

## Conclusion

I hereby issue an Order of Possession in favour of the landlord effective three days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

A Monetary Order in the amount of **\$1,900.06** 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



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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: July 07, 2009.

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Dispute Resolution Officer