



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, 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, late payment fees and the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

### 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 keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on May 1, 2008. Rent is \$995.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$497.50 on April 18, 2008.

The Landlord said the Tenant did not pay June 2009 rent when it was due and as a result on June 2, 2009, she posted a 10 Day Notice to End Tenancy on the Tenant's door. The Landlord also said that June and July 2009 rent are still unpaid. The Tenant did not dispute this evidence.

### 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 of rent and utilities in arrears or apply for dispute resolution to dispute the amount. 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. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted or on June 5, 2009. Consequently, the Tenant would have had to pay the rent in arrears or apply to dispute that amount of the Notice within 5 days, or no later than June 10, 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), 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 June 15, 2009.

Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$1,990.00, late fees of \$40.00 and the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act 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:	\$1,990.00
Late fees:	\$40.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,080.00
Less: Security Deposit:	(\$497.50)
Accrued Interest:	<u>(\$5.26)</u>
Balance Owing:	\$1,577.24

## Conclusion

An Order of Possession to take effect 48 hours after service of it on the Tenant and a Monetary Order in the amount of **\$1,577.24** 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: July 28, 2009.

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Dispute Resolution Officer