



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

The Landlord served the Tenants by registered mail on June 17, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, notification cards were delivered to the rental unit address on July 20, 2009, however the Tenants did not pick up the hearing packages. I find pursuant to s. 89 of the Act that the Tenants were properly served with the Notice of this hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on June 1, 2008. Rent was \$750.00 per month until July 1, 2009 when it was increased to \$775.75 per month. Rent is payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord claims that the Tenants did not pay rent for June 2009 when it was due and as a result, on June 19, 2009, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated June 19, 2009 on the Tenants' door. The Landlord said that the Tenants have not paid the arrears set out on the Notice and their pre-authorized payments for July and August 2009 were refused by the Tenants' bank for lack of funds. Consequently, the Landlord also sought to recover late payment fees and NSF fees.



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

## 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. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on June 22, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than June 27, 2009.

I find that the Tenants have not paid the amount indicated on the Notice and have not applied for dispute resolution. 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 Tenants. I also find that the Landlord is entitled to recover rent and parking arrears for June, July and August 2009, as well as late payment fees for those months. I find that there is insufficient evidence to support the NSF fees claimed and in particular, note that the Landlord provided no evidence that it was charged those amounts by its financial institution. As the Landlord has been successful in this matter it is entitled to recover the \$50.00 filing fee for this proceeding.

I Order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenants' 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:

June rent arrears:	\$750.00
June parking:	\$25.00
June late fee:	\$25.00
July rent arrears:	\$775.75
July parking:	\$25.00
July late fee:	\$25.00
August rent/loss of rent:	\$775.75
August parking:	\$25.00
August late fee:	\$25.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,501.50
Less: Security Deposit:	(\$375.00)
Accrued Interest:	<u>(\$3.29)</u>
BALANCE OWING:	\$2,123.21



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a monetary order in the amount of **\$2,123.21** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; 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: August 18, 2009.

---

Dispute Resolution Officer