



## 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 were sent to the tenant by registered mail on July 22, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

#### Issues(s) to be Decided

- Whether the Landlord is entitled to an Order of Possession?
- Whether the Landlord is entitled to a Monetary Order to recover unpaid rent?
- Whether the landlord is entitled to keep all or part of the security deposit in partial payment towards any rent arrears?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

#### Background and Evidence

This tenancy started on October 01, 2005. Rent is \$720.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$330.00 on September 07, 2005. This is a month to month tenancy. The tenant failed to pay his rent for July, 2009 and on July 07 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent. This was posted to the tenants' door and was deemed to have been served three days after posting. The Notice states that the tenant has five days to pay the outstanding rent, apply for Dispute Resolution or the

tenancy would end on July 20, 2009. Since that time the tenant did not pay the rent arrears and has not paid rent for August and September, 2009. The landlord has requested to amend his application to include the rent arrears for September. This request is approved.

The tenant does not dispute that he owes rent in the sum of \$2,160.00 for July, August and September, 2009. The tenancy agreement between the tenant and landlord allows the landlord to recover \$25.00 per month in late fees to a sum of \$75.00; the tenant does not dispute this. The landlord is also requesting the tenant is ordered to pay an additional \$50.00 for a filing fee he was ordered to pay after a hearing in October, 2008.

The landlord has requested an Order of Possession and a Monetary Order to recover the unpaid rent, filing fees and late fees.

### Analysis

I find that there is no dispute of the fact that the tenant owed arrears of \$720.00 for rent that was due on July 01, 2009. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days, therefore the Ten-Day Notice still remained in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

The tenant does not dispute the fact that he owes the landlord rent for July, August and September to the sum of \$2,160.00 plus late fees of \$75.00. The landlord claims the tenant owes \$50.00 he was ordered to pay to the landlord at his last hearing in October, 2008. However, the landlord did not follow through with the procedures to recover this amount at the time and therefore can not make another application at this hearing to recover this amount. I uphold the landlords' application for a Monetary Order for unpaid rent, late fees and to recover the filing fee for this application. The landlord may retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears.

The landlord is entitled to a Monetary Order as follows:



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Rent arrears and late fee	\$2,235.00
Total amount to pay	<b>\$1,943.30</b>

### Conclusion

An Order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$1,943.30** 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 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: September 11, 2009.

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