



# 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, a Monetary Order for unpaid rent, for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on July 31, 2009. The tenant confirmed he had received them.

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

### Issues(s) to be Decided

- Is the Landlord is entitled to an Order of Possession?
- Is the Landlord is entitled to a Monetary Order to recover unpaid rent and the filing fee?
- Is the landlord is entitled to keep all or part of the security deposit in partial payment towards any rent arrears?
- Is the landlord entitled to a Monetary Order to cover costs for repair to damages to the rental unit?

## Background and Evidence

This tenancy started sometime in May, 2009. Rent is \$875.00 per month payable on the 1<sup>st</sup> of each month. The tenants paid a security deposit on or about May 01, 2009 of \$437.50.

The tenants paid \$775.00 in rent for May, 2009 which left an outstanding amount for May of \$100.00. The tenants paid \$460.00 towards their rent for June, 2009 which left an outstanding balance for June of \$415.00. The tenants did not pay rent for July by the due date and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent on July 17, 2009. This was handed to the tenants in person and was deemed to have been served on the same day. The Notice states that the tenant has five days to pay the outstanding rent, apply for dispute resolution or the tenancy will end on July 27, 2009. Since that time the tenants have not paid rent for August or September, 2009.

The tenants testify that they are waiting for an EI payment to come through and have not been able to pay the rent. They do not dispute that they owe rent to the sum of \$3,140.00.

The landlord has requested an Order of Possession and a Monetary Order to recover the rent arrears and has requested that he can keep the tenants security deposit in partial payment of the rent arrears.

The landlord states that the tenants have caused some damages to the rental property and it requires cleaning. They have not submitted any evidence to support this section of their claim.

## Analysis

I find that there is no dispute of the fact that the tenants owe rent to the sum of \$3,140.00. If the tenants had paid the rent due for May, June and July within five days of receiving the Notice this 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 remains 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 pursuant to section 55(3) of the *Act*.

As the tenants do not dispute the fact that they owe the landlord rent to the sum of \$3,140.00 I uphold the landlords' application for a Monetary Order to recover the rent arrears pursuant to section 67 of the *Act*. The landlord may retain the tenants' security deposit in partial payment towards the rent arrears pursuant to section 38(4)(b) of the *Act*.

The landlord has requested a Monetary Order for damage or loss under the *Act*, regulation or tenancy agreement. However, the landlord has not provided any evidence to support this section of his claim and I therefore dismiss this section of his claim with leave to reapply.

As the landlord has been largely successful with their application I find that they are entitled to recover the filing fee of \$50.00 for the cost of this application pursuant to section 72(1) of the *Act*.

The landlord is entitled to a Monetary Order as follows:

Rent arrears	\$3,140.00
Less security deposit	(-\$437.50)



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Total amount to pay	<b>\$2,752.50</b>
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## Conclusion

An Order of Possession has been issued to the landlord. A copy of the Order must be served on the tenants and the tenants must vacate the rental unit **on September 23, 2009**. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$2,752.50** has been issued to the landlord and a copy of it must be served on the tenants. If the amount of the order is not paid by the tenants, 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 16, 2009.

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Dispute Resolution Officer