



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, MNDC, RR, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent; compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization to reduce rent. The landlord applied for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to provide relevant testimony.

At the commencement of the hearing, the tenant stated that she received the landlord's Application for Dispute Resolution in her mailbox on September 15, 2009 and that the envelope had markings of registered mail but that she did not sign for the registered mail. The landlord had provided a registered mail receipt, including tracking number, as evidence of mailing the landlord's Application for Dispute Resolution to the tenant. Having been satisfied that the tenant had received the landlord's Application for Dispute Resolution and is aware of the landlord's requests against the tenant, I deemed the tenant sufficiently served and proceeded to hear the landlord's application.

The tenant stated that she posted evidence upon a website and had served the landlord and the Residential Tenancy Branch with the website address. I did not find that the evidence posted on the website to be sufficiently served as required by the Rules of Procedure and I excluded the evidence, with the exception of the video. The tenant was permitted the opportunity to provide verbal testimony but indicated the evidence posted on the website was necessary to prove her claim. The tenant requested an adjournment in order to further research the requirements of the Act and submit evidence. The landlords indicated they did not object to a dismissal of the tenant's monetary claim with leave to reapply. The tenant's monetary claim was dismissed with leave to reapply. The tenant's request for cancellation of the Notice to End Tenancy was heard during this hearing.

The landlord amended the landlord's monetary claim to remove a request for unpaid rent for July 2009 as this was requested in error. The amendment was accepted.

In the minutes before the teleconference call ended, one of the landlord's representatives left the call due to another appointment. Shortly thereafter the tenant used profanity towards the landlords and voluntarily left the teleconference call. I did not hear any new evidence after the tenant left the conference call.

## Issues(s) to be Decided

1. Have the landlords established an entitlement to an Order of Possession for unpaid rent?
2. Has the tenant shown grounds to set aside the Notice to End Tenancy for unpaid rent?
3. Have the landlords established an entitlement to unpaid rent?
4. Retention of the security deposit.
5. Award of the filing fee.

## Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The tenancy commenced September 15, 2008. There is no written tenancy agreement. Initially, the tenant was required to pay rent of \$1,575.00 on the 1<sup>st</sup> day of every month. The tenant paid a \$1,575.00 security deposit near the commencement of the tenancy. In the previous few months, the landlords have accepted a reduced rent of \$1,350.00 per month from the tenant. On August 5, 2009 the landlord left a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) in the tenant's mailbox after the tenant's rent cheque for August 2009 was returned for a stop payment placed on the cheque by the tenant. The Notice indicates that the tenant failed to pay rent on August 1, 2009 in the amount of \$1,350.00.

The tenant did not pay rent within five days of receiving the Notice but did dispute the Notice within the five day time limit. The tenant stated that she stopped payment on her August 2009 rent cheque as she was of the position the landlord had not adequately responded to her concerns about the rental unit. The tenant has not paid any rent for September 2009 and continues to occupy the rental unit.

The landlord requested an Order of Possession effective October 1, 2009.

## Analysis

The landlord collected a security deposit that was \$787.50 in excess of the amount permitted under the Act and the overpayment has been applied to rent payable by the tenant; however, the security deposit overpayment was not sufficient to satisfy the amount of unpaid rent for August 2009.

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Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The right to withhold rent includes authorization by a Dispute Resolution Officer and consent by the landlord. Since the tenant acknowledged she did not have the landlord's consent to withhold rent for August 2009 and the tenant did not have the authorization of a Dispute Resolution Officer to withhold rent I do not find the tenant had a lawful right to withhold rent except for the \$787.50 security deposit overpayment. As the tenant acknowledged she did not pay all of the rent owing within five days of receiving the Notice, I find insufficient grounds to cancel the Notice to End Tenancy.

In light of the above finding, I find the landlord entitled to an Order of Possession effective October 1, 2009. The landlord must serve the Order of Possession upon the tenant and may enforce it in The Supreme Court of British Columbia as an Order of that court.

The landlord is authorized to retain the remainder of the security deposit and accrued interest of \$3.94 in partial satisfaction of unpaid rent for August and loss of rent for September 2009. I also award the filing fee to the landlord. I do not award the landlord loss of rent for October 2009 as such a loss has not yet been established and I dismiss that portion of the landlord's claim with leave to reapply. With this application, the landlord has established an entitlement to compensation as follows:

Unpaid rent – August 2009 (\$1,350.00 – 787.50)	\$ 562.50
Loss of rent – September 2009	1,350.00
Filing fee	50.00
Sub-total	<u>\$ 1,962.50</u>
Less: security deposit and interest	<u>(791.44)</u>
Monetary Order for landlord	<u>\$ 1,171.06</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

## Conclusion

The tenant's request for monetary compensation has been dismissed with leave to reapply. I have found insufficient grounds to cancel the Notice and that portion of the tenant's application is dismissed without leave.



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The landlord is provided an Order of Possession effective October 1, 2009. The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of unpaid rent and loss of rent. The landlord has been provided a Monetary Order for the balance remaining of \$1,171.06. The landlord's claim for loss of rent for October 2009 is dismissed with leave to reapply.

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 24, 2009.

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Dispute Resolution Officer