



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD

### 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 keep the Tenants' security deposit in partial payment of rent arrears.

The Landlord served the Tenants by registered mail on August 16, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, a notification card was left for the Tenants on August 17, 2009 but they did not pick up the hearing packages. I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

### 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 Tenants' security deposit?

### Background and Evidence

This tenancy started on June 27, 2009. Rent was \$600.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$300.00 on June 16, 2009.

The Landlord said the Tenants' rent cheque for July 2009 was returned for non-sufficient funds and as a result he was charged a \$40.00 fee by his bank. The Landlord said the Tenants advised another tenant of the rental property on July 10, 2009 that they were going away for the week end, however they never returned. The Landlord said he left a number of messages for the Tenants but they never returned his calls. The Landlord also said that he contacted the phone numbers for the Tenants' employers that they had listed on their application form but discovered that this information was false. Consequently, on July 15, 2009, the Landlord posted a 10 Day Notice to End Tenancy on the Tenants door.

### Analysis

The Landlord claimed that he left the Tenants' belongings in the rental unit and has not re-rented the unit yet. Consequently, the Landlord sought rent for July, August and



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September, 2009. Section 24(1)(b) of the Regulations to the Act says that a Landlord may consider that a tenant has abandoned a rental unit if the tenant leaves their personal property in the rental unit for a continuous period of one month without paying rent. After a month, the Landlord may remove the Tenants' personal property from the rental unit and re-rent it.

I find that the rental unit was abandoned as of August 10, 2009 and that the Landlord should have removed the Tenants' belongings on that date and tried to re-rent the rental unit rather than wait to obtain an Order of Possession. As the rental unit was abandoned, an Order of Possession is not necessary. I also find that the Landlord is entitled to August 2009 rent but not to rent for September 2009 as the Landlord should have tried to re-rent the rental unit as soon as possible after August 10, 2009.

I also find that the Landlord is entitled to recover rent arrears for July 2009, as well as an NSF fee of \$40.00 and registered mail expenses of \$20.00. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,200.00
NSF fee:	\$40.00
Registered mail:	<u>\$20.00</u>
Subtotal:	\$1,260.00
Less: Security Deposit:	(\$300.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$960.00

## Conclusion

The Landlord's application for an Order of Possession is dismissed. The Landlord will receive a Monetary Order for \$960.00 and a copy of it must be served on the Tenants. If the amount 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 14, 2009.

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Dispute Resolution Officer