



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MNSD, FF, MT

### 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 Tenant's security deposit and recover the filing fee for this proceeding. The Tenant applied for more time to cancel a Notice to End Tenancy and to cancel a Notice to End Tenancy for unpaid rent.

The Landlord served the Tenant with a copy of the Application and Notice of Hearing on September 8, 2009 by registered mail. According to the Canada Post online tracking system, the Tenant received the hearing package on September 12, 2009. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in her 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 Tenant's security deposit?

### Background and Evidence

This tenancy started on November 1, 2007. Rent is \$700.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$337.50 on October 30, 2007.

The Landlord said the Tenant did not pay rent for September 2009 when it was due and as a result, on September 2, 2009 she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said the Tenant has not paid anything since being served with the Notice and is now also in arrears of rent for October 2009. The Landlord also sought to recover late payment fees of \$25.00. The Landlord said the tenancy agreement contains a term to that effect.

### Analysis

I find that the Tenant was served with a 10 Day Notice on September 2, 2009 and that she applied on September 8, 2009 to cancel it. Section 46(4) says that a Tenant has 5

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days from the date she receives a 10 Day Notice to apply for dispute resolution. Section 25(3) of the Interpretation Act of B.C. says "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open." Consequently, as the 5<sup>th</sup> day after service of the Notice was Sunday, September 7, 2009, the Tenant had until the following day to file her application and therefore I find that she filed her application on time.

In the absence of any evidence from the Tenant to the contrary, I find that September 2009 rent is still in arrears and as a result, the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 2, 2009 is dismissed. Consequently, I find that the Landlord is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for September 2009 and for the period October 1 – 15, 2009. The (7 page) copy of the tenancy agreement provided by the Landlord does not contain a term regarding the payment of late fees as required by s. 7 of the Regulations to the Act and as a result, that part of the Landlord's claim is dismissed. I find that the Landlord's application for a loss of rental income is premature and that part of her claim is dismissed with leave to re-apply. As the Landlord has been successful in this matter, she is entitled to recover the \$50.00 filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial satisfaction of the unpaid rent. The Landlord will receive a monetary order for the balance owing as follows:

|                          |                 |
|--------------------------|-----------------|
| September 2009 rent:     | \$700.00        |
| October 1-15, 2009 rent: | \$350.00        |
| Filing fee:              | <u>\$50.00</u>  |
| Subtotal:                | \$1,100.00      |
| Less: Security deposit:  | (\$337.50)      |
| Accrued interest:        | <u>(\$5.94)</u> |
| Balance owing:           | \$756.56        |

## Conclusion

The Tenant's application is dismissed. The Landlord has been issued an Order of Possession to take effect 48 hours after service of it on the Tenant and a Monetary Order in the amount of **\$756.56** and a copy of the Orders must be served on the



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Tenant. 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: October 09, 2009.

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Dispute Resolution Officer