



# 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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for recovery of the filing fee for this proceeding and to keep the Tenants' security deposit in payment of those amounts.

### 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 February 1, 2005. Rent is \$1,092.00 per month payable in advance on the 1<sup>ST</sup> day of each month. The Tenants paid a security deposit of \$525.00 at the beginning of the tenancy.

The Landlord said that the Tenants did not pay rent for September 2009 when it was due and as a result, on September 5, 2009 he served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent. The Tenants paid September and October 2009 rent on or about October 26, 2009 and the Landlord gave them with a receipt stating that the payment was accepted "for use and occupancy only." The Landlord also said that November 2009 rent is unpaid.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenants would have had to pay September 2009 rent or apply to dispute that amount no later than September 10, 2009.



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I find that the Tenants did not pay September 2009 rent within 5 days of receiving the 10 Day Notice and did not apply for dispute resolution. Consequently, I find that the Landlord is entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover rent arrears for November 1 – 5, 2009 in the amount of \$182.00, a loss of rental income for November 6 – 15, 2009 in the amount of \$364.00 as well as the \$50.00 filing fee for this proceeding. The Landlord may re-apply for a further loss of income if necessary. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$182.00
Loss of rental income:	\$364.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$596.00
Less: Security Deposit:	(\$525.00)
Accrued Interest:	<u>(\$18.57)</u>
BALANCE OWING:	\$52.43

## Conclusion

An Order of Possession effective 48 hours after service of it on the Tenants and a Monetary Order in the amount of **\$52.43** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; 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: November 05, 2009.

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Dispute Resolution Officer