



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, OPC, (MNR), MNDC, MNSD, FF  
CNR, MNDC, RR

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied to cancel a Notice to End Tenancy, for compensation for damage of loss under the Act or tenancy agreement and for an order permitting her to deduct the cost of repairs, services or facilities from rent.

### Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
4. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
5. Is the Tenant entitled to compensation for damages and if so, how much?

### Background and Evidence

This fixed term tenancy started on May 1, 2009 and expires on May 1, 2010. Rent is \$975.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$487.50 and pet damage deposit of \$500.00 at the beginning of the tenancy.

The Landlords claim that the Tenant did not pay rent for November 2009 when it was due and as a result on November 2, 2009, they posted a 10 Day Notice to End Tenancy on the rental unit door and sent a copy of the Notice by registered mail to the Tenant on November 6, 2009.

The Tenant deposited \$975.00 to the Landlords' bank account on December 4, 2009. On December 7, 2009, the Landlords sent the Tenant a letter advising her that the payment was accepted for use and occupancy only. The Tenant argued that she could not afford to pay November 2009 rent when it was due because she had incurred



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additional expenses as a result of having to find alternate accommodations in October 2009 while repairs were being made to the rental unit. The Tenant admitted that she received a reduction of rent for October 2009 but argued that she was entitled to further compensation for her loss of use of the rental unit during October 2009.

## 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 they must vacate the rental unit at that time.

Although the Tenant applied to dispute the Notice within the time limits under the Act, I find that there are no grounds to support her application to cancel it. In particular, I find that the Landlords did not agree to forego rent for November 2009 to compensate the Tenant and I further find that the Tenant did not have an Order from the Residential Tenancy Branch entitling her to withhold rent for November 2009.

As a result, the Tenant's application is dismissed and I find pursuant to s. 55(1) of the Act that the Landlords are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

**The balance of the Parties' claims are adjourned to January 25, 2010 at 1:30 p.m. for hearing.**

## Conclusion

The Landlords have been issued an Order of Possession to take effect 48 hours after service of it on the Tenant. The Order must be served on the Tenant and may be enforced in the Supreme 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: December 15, 2009.

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Dispute Resolution Officer