



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNDC, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, compensation for damages and/or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that December 21, 2009 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenants via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to the rental unit address.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

### **Preliminary Matter**

Late evidence submitted on January 26, 2010 was not referenced. The landlord was at liberty to provide testimony.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement requires the tenants to pay monthly rent of \$650.00 on the first day of each month. The tenants paid \$325.00 cash on September 15, 2009, the date the tenancy commenced. The landlord testified that the tenants have made one further payment, on December 31, 2009, in the sum of \$100.00. The landlord stated that they have not received any further rent for October, November, December 2009 or January 2010.

The landlord stated that on December 3, 2009 a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of December 18, 2009 was served by registered mail sent to the rental unit address. During the hearing the landlord confirmed that the Canada Post web site indicates that Notice was successfully delivered to the male tenant on December 8, 2009.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$650.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord stated that the male tenant provided a written agreement of arrears payments but only made a \$100.00 payment on December 31, 2009.

The landlord is claiming costs for travel to the rental unit, unpaid utilities, lock replacement and registered mail costs. Receipts were not provided for these costs.

### Analysis

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on December 18, 2009, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after service.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,500.00 for October, November, December, 2009 and January 2010;

less \$100.00 paid on December 31, 2009, and that the landlord is entitled to compensation in that amount.

I dismissed without leave to reapply the landlord's claim for travel and registered mail costs.

The balance of the landlord's claim for compensation is dismissed with leave to reapply.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The landlord has been granted an Order of Possession that is effective **two days after service to the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of **\$2,550.00**, which is comprised on \$2,550.00 in unpaid October, November, December 2009, rent; January 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim for travel and registered mail costs are dismissed without leave to reapply.

The balance of the landlord's claim for compensation for unpaid utilities and lock replacement 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: January 28, 2010.

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Dispute Resolution Officer