



# 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 reconvened hearing was scheduled pursuant to a Direct Request decision issued December 7, 2009. The tenant did not appear at the hearing. The landlord affirmed that she personally served the tenant with Notice of this hearing at his office within three days of receiving the decision. I was satisfied the landlord adequately notified the tenant of this hearing and I proceeded to hear from the landlord without the tenant present.

### Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord entitled to retain all or part of the security deposit?
4. Award of the filing fee.

### Background and Evidence

The landlord provided undisputed testimony as follows. The tenancy commenced September 1, 2009. The tenant is required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month. The tenant paid a \$400.00 security deposit on September 5, 2009. The tenant paid his September 2009 rent by way of a partial payment of \$200.00 on September 5, 2009 and a \$600.00 cheque that was returned for insufficient funds. The tenant paid the balance owing for September rent on October 3, 2009. On October 3, 2009 the landlord personally served the tenant with a *10 Day Notice to End Tenancy for*

*Unpaid Rent* (the Notice) with respect to the rent not paid for October 2009. On October 19, 2009 the tenant made a partial payment of \$400.00 and was issued a receipt for “use and occupancy only”. After making the dispute resolution application the landlord received \$400.00 from the tenant October 26, 2009 and the tenant was issued a receipt for “use and occupancy only”. The landlord subsequently received payments of \$800.00 on November 30, 2009 and December 24, 2009. The landlord has not received payment for use or occupation for January 2010.

Upon enquiry, the landlord confirmed that the tenant was not issued receipts showing “use and occupancy only” for the payments received in November and December 2009; however, the landlord testified that she been informed the tenant on numerous occasions that the landlord is seeking to end the tenancy and the tenant must vacate the rental unit.

### Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date. In this case, the tenant did not dispute the Notice or pay the outstanding rent within five days.

I have considered the issue of waiver of the Notice as raised by the Dispute Resolution Officer in the Direct Request decision. A Notice may be waived or withdrawn by consent of both parties. I find that the landlord had communicated to the tenant that the Notice to End Tenancy remained in effect and that the tenancy would be pursued upon accepting subsequent payments from the tenant. I find insufficient evidence that the parties had agreed or acted in such a way as to indicate the Notice had been waived by mutual consent. Therefore, I find that the Notice remained in full force and effect.

Based upon all of the evidence before me, I am satisfied that the tenancy ended on October 13, 2009 and that the landlord is entitled to regain possession of the rental unit. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant. The landlord may enforce the Order of Possession by filing it in The Supreme Court of British Columbia.

Since I the landlord requested monetary compensation for unpaid rent for October 2009 in making this application and that unpaid rent has since been paid by the tenant, I do not provide the landlord with a Monetary Order with respect to unpaid rent for October 2009. The landlord retains the right to make a subsequent application for loss of rent related to subsequent months if the landlord incurs a loss.

I award the filing fee to the landlord and I hereby authorize the landlord to recover the cost of the filing fee by deducting \$50.00 from the tenant's security deposit.

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in order to recover the filing fee paid for this application.

The unpaid rent for October 2009 has been recovered by the landlord and I do not provide a Monetary Order to the landlord for unpaid rent. The landlord retains the right to make a subsequent application for loss of rent for subsequent months should the landlord incur a loss.

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 15, 2010.

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Dispute Resolution Officer