



# 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 as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit and pet damage deposit.

### Issues to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit and pet damage deposit?

### Background and Evidence

This month to month tenancy started on May 29, 2009. Rent is \$1,500.00 per month payable in advance on the 29<sup>th</sup> day of each month. The Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$300.00 on May 19, 2009.

The Landlord claims that the Tenants did not pay rent for December, 2009 when it was due and as a result, on December 3, 2009 the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 3, 2009 by posting it on the rental unit door. The Landlord said that the Tenants have not paid the arrears set out on the Notice and are now in arrears of rent for January, 2010.

The Tenants do not dispute that rent is unpaid for December 2009 and January 2010 but claim they withheld their rent (in part) because the Landlord failed to address certain repairs and they believed he was not paying his mortgage on the rental property.

### 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.



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Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on December 5, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than December 10, 2009. I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled 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 in the amount of \$3,000.00 as well as 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 Tenants' security deposit and pet damage deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$3,000.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,050.00
Less: Security Deposit:	(\$750.00)
Pet Deposit:	<u>(\$300.00)</u>
Balance Owing:	\$2,000.00

## Conclusion

An Order of Possession effective 48 hours after service on the Tenants and a monetary order in the amount of **\$2,000.00** 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: January 26, 2010.

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Dispute Resolution Officer