



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

**OPR, OPB, MNR, MNSD, 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 and breach of an agreement with the landlord, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$680.00 on the first day of the month. The tenant paid a security deposit of \$320.00 on September 13, 2004.

### Settled Agreement

During the hearing the tenant acknowledged receipt of a 10 Day Notice to End Tenancy for Unpaid Rent sometime in early January 2010. The tenant confirmed that he did give the landlord a cheque for January rent which was returned NSF. The tenant also acknowledged that he did not pay February, 2010, rent.

The tenant offered to pay January rent owed as follows:

- \$680.00 (January rent) on February 4, 2010; and
- \$680.00 (February rent) on February 15, 2010.

The tenant also offered to move out of the rental unit at the end of February, 2010 and to pay the landlord the \$50.00 filing fee.

The landlord accepted the tenant's offer to make the rent arrears payments on February 4 and 15, and agreed that the tenant could vacate the rental unit no later than 1 p.m. on February 28, 2010. Therefore, based upon the mutual agreement to end this tenancy I find that the landlord is entitled to an Order of possession effective at 1 p.m. on February 28, 2010.

I find that the landlord is entitled to a monetary Order in the sum of \$1,410.00; which includes January and February rent owed, plus the filing fee cost for this Application of the \$50.00. This Order may be enforced by the landlord if the tenant fails to make the agreed-upon payments of rent and filing fee costs.

The landlord and tenant should retain proof of any payments made, as these would be useful if the monetary Order is enforced.

I find that the deposit plus interest held in trust by the landlord must be disbursed at the end of the tenancy, as required by section 38 of the Act. I explained to the parties that, pursuant to section 38(3) of the Act, the landlord could, at the end of the tenancy, retain from the deposit any amount that remains owed by the tenant for January and February rent and the filing fee costs.

### Conclusion

The landlord and tenant came to a settled agreement that the tenant will make rent arrears payments in the sum of \$680.00 on February 4 and February 15, 2010.

The tenant has agreed to pay the landlord the \$50.00 filing fee costs before February 28, 2010.

The parties have mutually agreed that this tenancy will end by 1 p.m. on February 28, 2010.

The landlord has been granted an Order of possession that is effective at **1 p.m. on February 28, 2010**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

A monetary order in the sum of \$1,410.00 comprised of \$1,340.00 in unpaid January and February, 2010, rent and the \$50.00 filing fee cost, has been issued to the landlord. In the event that the tenant does not comply with the terms of this settled agreement the Order may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: February 04, 2010.

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Dispute Resolution Officer