



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was scheduled to hear the landlords' application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of this hearing by posting the hearing documents on the door of the rental unit on January 12, 2010 and via registered mail sent to the tenant at the rental unit. The landlord provided documentary evidence of the registered mail sent to the tenant including tracking number and signature of the tenant receiving the registered mail on January 15, 2010. I am satisfied the landlord sufficiently served the tenant with notice of this hearing and I proceed to consider the landlord's application without hearing from the tenant.

The landlord requested the application be amended to include loss of rent for the month of February 2010 and retention of the security deposit. As the landlord affirmed that the tenant has been living at the rental unit in February 2010 I accepted the landlord's requests for amendment.

### Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order and if so, the amount?
3. Retention of the security deposit.
4. Award of the filing fee.

### Background and Evidence

The landlord testified as follows. The tenant began residing at the rental unit in March 2008. March 6, 2009 the parties entered into a new tenancy agreement requiring the tenant to pay rent of \$875.00 on the 3<sup>rd</sup> day of every month. A \$437.50 security deposit was carried forward from the previous tenancy agreement. In March 2009 the tenant starting falling behind in her rent payments. On December 21, 2009 the female landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and posted it on the tenant's door in the presence of the landlord's husband. The Notice indicates rent of \$4,600.00 was outstanding and has an effective vacancy date of December 31, 2009. The tenant did not pay the landlord any rent after receiving the Notice and did not dispute the Notice.

The landlord is seeking monetary compensation of \$5,475.00 for unpaid rent including January 2010 and a further \$875.00 for loss of rent for February 2010. As evidence the landlord provided a copy of the Notice, the tenancy agreement, an accounting of the rent arrears and a copy of a returned cheque.

### Analysis

A landlord may end a tenancy where a tenant does not pay the rent due under section 46 of the Act. Where a tenant receives a Notice to End Tenancy for Unpaid Rent, the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate the rental unit by the effective date.

I am satisfied that the landlord served a Notice for unpaid rent upon the tenant as stated by the landlord. Since the Notice was posted on the door, it was deemed to be received by the tenant three days later in accordance with section 90 of the Act. Accordingly, the effective date of the Notice should read January 3, 2010 and the Notice is automatically changed under section 53 of the Act to reflect an effective date of January 3, 2010.

Upon review of the documentation before me, I am satisfied that the tenant owed the landlord \$4,600.00 in outstanding rent as of December 3, 2009. Although the Notice indicates that rent of \$4,600.00 was outstanding as of December 1, 2009 I do not find this error invalidates the Notice since the Notice was issued after December 3, 2009. Therefore, I uphold the Notice as valid and find the tenancy ended and the tenant was required to vacate the rental unit no later than January 3, 2010. Since the tenant has not returned possession of the rental unit to the landlord, **I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.** The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlords are entitled to recover unpaid rent of \$5,475.00 including the month of January 2010 and I also award loss of rent in the amount of \$875.00 to the landlords since the tenant did not vacate the rental unit and caused the landlords to incur a further loss of rent.

As the landlords were successful with this application, I also award the filing fee to the landlords. The landlords are authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed by the tenant. I provide for the landlords with this decision a Monetary Order calculated as follows:

Unpaid rent up to and including January 2010	\$ 5,475.00
Loss of rent – February 2010	875.00
Filing fee	100.00
Less: security deposit and accrued interest	<u>(442.99)</u>
Monetary Order	<u>\$ 6,007.01</u>

The landlords must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The landlords are authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlords and the landlords has been provided a Monetary Order for the balance of \$6,007.01 to serve upon the tenant.

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 18, 2010.

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Dispute Resolution Officer