



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
CNR, ERP, RP, PSF, LRE, LAT

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied to cancel a Notice to End Tenancy, for an Order requiring the Landlords to make emergency repairs and general repairs, for a monetary order to compensate the Tenant for making emergency repairs and for an order authorizing the Tenant to change the locks on the rental unit.

The Landlords said they served the Tenant at the rental unit address with the Application and Notice of Hearing by registered mail on January 22, 2010. Based on the Landlords' evidence, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the beginning of the hearing the Landlords claimed that they had not been served with a copy of the Tenant's application. In the absence of any evidence from the Tenant to the contrary, his application is dismissed without leave to reapply.

### Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

### Background and Evidence

This fixed term tenancy started on October 16, 2009 and is supposed to expire on October 15, 2010. Rent is \$840.00 per month plus \$40.00 for parking payable in advance on the first day of the month. The Tenant paid a security deposit of \$420.00 at the beginning of the tenancy.

The Landlords said the Tenant did not pay rent for January 2010 when it was due and as a result, on January 7, 2010, they posted a 10 Day Notice to End Tenancy for Unpaid Rent dated January 7, 2010 on the rental unit door. The Landlords said the Tenant has not paid the overdue rent for January 2010 and is now in arrears of rent for February 2010.



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## Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent, 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.

Although the Tenant applied to cancel the 10 Day Notice to End Tenancy within the time limits under the Act, it was dismissed due to his failure to serve his application on the Landlords. In any event, I find that there are no grounds for the Tenant's application because rent remains unpaid for January and February 2010+. Consequently, I find pursuant to s. 55(1) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlords are entitled to recover rent arrears in the amount of \$1,760.00, as well as the \$50.00 filing fee for this proceeding. The Landlord sought to recover 2 late payment fees of \$20.00 each however the parties' tenancy agreement contains a term that requires the Tenant to pay \$45.00 for each late fee. Section 7 of the Regulations to the Act says that in order to claim a late payment fee, there must be a term in the tenancy agreement to that effect and a Landlord may not charge more than \$25.00. Section 5 (2) of the Act says that any attempt to contract out of the Act or regulations is of no force and effect. I find that the term of the parties' tenancy agreement which provides for the payment of a \$45.00 late fee contravenes the Act and is therefore of no force and effect. Consequently, this part of the Landlords' claim is dismissed without leave to reapply.

I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,760.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,810.00
Less: Security Deposit:	(\$420.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$1,390.00

***I find that the Tenant's failure to pursue his application is an abuse of the dispute resolution process and as a result, I order pursuant to s. 72 that the Tenant repay the \$50.00 filing fee that was waived for this proceeding.***



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## Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a monetary order in the amount of **\$1,390.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; 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: February 22, 2010.

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Dispute Resolution Officer