



# 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 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, 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 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?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

The tenancy agreement requires the tenant to pay monthly rent of \$850.00. The tenant paid a security deposit of \$425.00 on June 13, 2008.

The tenant agreed that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 12, 2010 was served by posting on the door effective January 5, 2010. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$970.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On January 11 the tenants paid \$400.00, and later in the month the balance owed was paid. The tenants paid February rent late and have not paid March rent. Each payment made has been followed by a receipt issued for use and occupancy only.

The landlord has requested late fee compensation for each of December 2009, and January to March, 2010, inclusive in the sum of \$80.00.

### Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on January 15, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants confirmed that they did not exercise either of these rights and, pursuant to section 46(5) of the Act; I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$850.00 for March, 2010 and December to march late fees in the sum of \$80.00 and that the landlord is entitled to compensation in the sum of \$930.00.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$428.52, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$980.00, which is comprised of \$850.00 in unpaid March 2010, rent; \$80.00 late fees and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$428.52, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$551.48**. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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: March 05, 2010.

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Dispute Resolution Officer