



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the landlord for an Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on July 09, 2010. This was unclaimed by the tenant. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on July 14, 2010 the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord also gave the tenant a copy of the hearing documents after they registered mail was returned to him.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

## Background and Evidence

This month to month tenancy started on July 01, 2004. Rent for this unit is \$1,049.00 per month and was reduced in July, 2010 to \$510.00 as the tenant receives BC Housing subsidy. The tenant paid a security deposit of \$375.00 prior to the commencement of her tenancy.

The landlord testifies that they took over the property from the previous landlords on June 01, 2010. They have inspected the files and do not have a complete record for this tenant showing her tenancy agreement. The landlord claims the tenant did not pay rent for June, 2010 of \$1,049.00 on the day it was due and a 10 Day Notice to End Tenancy was served to the tenant by posting it on her door on June 16, 2010. This gave the tenant five days to pay the outstanding rent or apply to dispute it or the tenancy would end on June 27, 2010. The landlord has only provided the first page of the 10 Day Notice in his evidence but the tenant confirmed she did receive page two of the Notice. The tenant made a partial payment of \$1,000.00 on June 21, 2010 by cheque however the cheque was returned to the landlord as there were insufficient funds available (NSF).

The tenant also failed to pay her subsidized rent for July, 2010 of \$510.00. Since the landlord filed his application the tenant has also failed to pay rent of \$510.00 for August, 2010. The landlord seeks to amend his monetary claim for unpaid rent to include all three months to the total sum of \$2,069.00.

The landlord seeks an Order of Possession to take effect as soon as possible. The landlord also seeks to recover his \$50.00 filing fee paid for his application.

## Analysis

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended date of the notice would be June 30, 2010. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Section 26 of the *Act* states: a tenant must pay rent on the day it is due under the tenancy agreement. I find the tenant has failed to pay rent on the first of each month for June, July and August, 2010. Consequently I find that the landlord is entitled to recover rent arrears for these three months to a total sum of **\$2,069.00** pursuant to section 67 of the *Act*. I have allowed the landlords' amended claim for August, 2010 to be included in this sum as the tenant continues to reside at the rental unit and would be aware that rent was due for this month also.

As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:



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Outstanding rent for June, July and August, 2010	\$2,069.00
<b>Total amount due to the landlord</b>	<b>\$2,119.00</b>

## Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,119.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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: August 27, 2010.

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Dispute Resolution Officer