



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") in person on June 17, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for a loss of rental income?
4. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

### Background and Evidence

This tenancy started on November 1, 2008. Rent is \$750.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$375.00 on October 22, 2008 and a pet deposit of \$200.00 on November 9, 2009.

The Landlord's agent said the Tenant did not pay rent for June 2010 when it was due and as a result, on June 2, 2010 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2010 on the door of the Tenant's rental unit. The Landlord said the Tenant has not paid rent for June, July and August 2010.

### Analysis

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

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Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on June 5, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 10, 2010.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for June 2010 in the amount of \$750.00, for July 2010 in the amount of \$750.00 and for the period, August 1 – 10, 2010, in the pro-rated amount of \$241.94. I further find that the Landlord is entitled to recover a loss of rental income to August 15, 2010 in the amount of \$120.97. As the Landlord has an obligation to mitigate her damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible, her application for a further loss of income is dismissed with leave to re-apply if she is unable to re-rent the rental unit for the balance of August 2010. I further find that the Landlord is entitled to recover 3 late payment fees of \$20.00 each pursuant to a term of the tenancy agreement to that effect.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit and pet damage deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,741.94
Loss of Rental Income:	\$120.97
Late payment fees:	\$60.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,972.91
Less: Security Deposit:	(\$375.00)
Accrued Interest:	(\$1.09)
Pet Deposit:	(\$200.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$1,396.82

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,396.82** have been issued to the Landlord. A copy



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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: August 10, 2010.

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Dispute Resolution Officer