



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord's agent (E.H.) said she served the Tenant by registered mail on July 28, 2010 with the Application and Notice of Hearing (the "hearing package") to the rental unit address but it was returned unclaimed. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. 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?

### Background and Evidence

This fixed term tenancy started on May 4, 2010 and expires on April 30, 2011. Rent is \$825.00 per month payable in advance on the 1<sup>st</sup> day of each month.

The Landlord said the Tenant did not pay rent for June or July 2010 and as a result, on July 7, 2010, the Landlord's agent (L.P.) posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 7, 2010 on the rental unit door. The Landlord's agents said the Tenant has not paid the arrears set out on the Notice and has not paid rent for August or September 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 will



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end on the effective date of the Notice and they must vacate the rental unit at that time. 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 July 10, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than July 15, 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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for June, July, August and September 1-15, 2010 in the amount of \$2,887.50, as well as a loss of rental income for September 16-30, 2010 in the amount of \$412.50 and the \$50.00 filing fee for this proceeding.

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$3,350.00** have been issued to the Landlord. 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: September 15, 2010.

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Dispute Resolution Officer