



# 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 compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 13, 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 unpaid rent and if so how much?

### Background and Evidence

This tenancy started on May 1, 2010 as a month to month tenancy. Rent is \$800.00 per month and utilities are written into the Tenancy agreement as \$162.00 per month, both rent and utilities are payable in advance of the 1<sup>st</sup> day of each month. The Tenant did not pay a security deposit.

The Landlord said that the Tenant is living at the rental unit and she has not made any payments to the Landlord since June, 2010. As a result, on July 29, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities on the Tenant's door of the rental unit. The Notice to End Tenancy was dated July 29, 2010. The Landlord said the Tenant has unpaid rent of \$360.00 for June and \$800.00 of unpaid rent for each month of July, August and September, 2010. He said the total unpaid rent is \$2,760.00. As well, the Landlord said the Tenant owes for utilities of \$162.00 for each month of June, July and August, 2010, totally \$486.00. The Landlord said the total amount of unpaid rent and utilities is \$3,246.00.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

## 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 pay the overdue rent or apply for dispute resolution. If the 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.

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 August 1, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 6, 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(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 of \$360.00 for June, \$800.00 for the months of July and August, 2010. I further find that the Landlord is entitled to recover a loss of rental income to September 20, 2010, in the amount of \$533.33 (\$800 X 20 of 30 days of September). The Landlord has an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. In addition I find that the Landlord is entitled to \$162.00 of unpaid utilities for each month of June, July and August, 2010. This amount is stated in the Tenancy Agreement and comes to a total for unpaid utilities of \$486.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order pursuant to s. 67 and s. 72 of the Act the Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$2,493.33
Utilities arrears	\$ 486.00
Recover filing fee	<u>\$ 50.00</u>
Total:	\$3,029.33



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## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$3,029.33 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 8, 2010.

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Dispute Resolution Officer