



# 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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery August 16, 2010 and by registered mail on August 16, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenants and Landlord present.

### 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?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 1998 as a month to month tenancy. Rent is \$1,148.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$428.00 on September 1, 1998.

The Landlord said that the Tenants did not pay \$932.00 of rent for June, 2010 and \$1,148.00 for July, as a result, on July 7, 2010 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 7, 2010 on the door of the Tenants' rental unit. The Landlord also said the Tenants have unpaid rent for August and September, 2010.

The Landlord said that the Tenants did make a payment of \$1,000.00 on August 16, 2010 and the Landlord issued a receipt for "Use and Occupancy".

The Landlord also said she has applied to recover the \$50.00 filing fee for this proceeding.



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The Tenants said they do not dispute the amount of rent owed and indicated that they are unable to pay the rent arrears or the rent for September, 2010. The Tenants said that they are prepared to move out if they are served an Order of Possession.

## 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 July 7, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 12, 2010.

I find that the Tenants have 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 for July, 2010, in the amount of \$1080.00 and \$1,148.00 of unpaid rent for August, 2010. I further find that the Landlord is entitled to recover a portion of the September, 2010, rent as the Tenants agreed it was unpaid and owed to the Landlord during the hearing. The Landlord is entitled to rent up to September 24, 2010 or the amount of \$918.40 (\$1,148.00 X 24 of 30 days of September). 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.

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 Tenants' security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$3,146.40
Recover filing fee	<u>\$ 50.00</u>
Subtotal:	\$3,196.40



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Less:	Security Deposit	\$428.00
	Accrued Interest	<u>\$ 50.48</u>
	Subtotal:	\$478.48
	Balance Owing	\$2,717.92

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,717.92 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: 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 16, 2010.

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Dispute Resolution Officer