



# 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 hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 16, 2010, the tenant did not attend the conference call hearing. An agent attended on behalf of the landlord, gave affirmed testimony, and provided a package of evidence in advance of the hearing. All evidence received, and the affirmed testimony of the landlord's agent has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The landlord's agent testified that the rental unit was originally rented on October 15, 2008 to a husband and wife. The husband tenant did not reside in the unit for very long, and the wife tenant remained in the unit. On August 24, 2009, her son was added to

the Tenancy Agreement, and the wife tenant passed away in June, 2010. A copy of the Tenancy Agreement was provided in advance of the hearing.

The tenancy began as a fixed term tenancy which expired on October 31, 2009 and then reverted to a month-to-month tenancy. Rent in the amount of \$699.97 was payable in advance on the 1<sup>st</sup> day of each month. On October 14, 2008 the landlord collected a security deposit in the amount of \$337.50.

The landlord's agent testified that the tenant failed to pay any rent for the month of August, 2010 and on August 26, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit. The tenant further failed to pay rent for the months of September and October, 2010. The landlord has not been served with an application by the tenant to dispute the notice.

The tenants had been paying an even \$700.00 for rent instead of the amounts due and therefore the landlord has been carrying a credit from month to month which now totals \$.27. The landlord is claiming \$2,099.24 in outstanding rent.

### **Analysis**

The *Residential Tenancy Act* states that:

**46 (1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The *Act* further states that the tenant may apply to dispute the notice within 5 days of receiving it or pay the rent in full. If the rent is paid in full within 5 days, the notice has no effect. If the tenant does not pay the rent or make an application for dispute resolution to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I find that the tenant was deemed to be served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 29, 2010 and did not pay the rent in full or dispute the notice within the time prescribed in the *Act*, and the tenant is therefore conclusively

presumed to have accepted that the tenancy ended on the effective date of the notice, being September 8, 2010.

I further find that the tenant failed to pay rent for the months of September and October, 2010 and the landlord is therefore entitled to a monetary order in the amount of \$2,099.64 for unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

### **Conclusion**

For the reasons set out above, I hereby grant the landlord an Order of Possession. The tenant must be served with the Order of Possession. If the tenant fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the landlord retain the security deposit in the amount of \$338.59 and grant the landlord a monetary order for the balance of \$1,811.05. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: October 21, 2010.

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Dispute Resolution Officer