



# 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 is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss or rent; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the rental unit on September 1, 2010. The Landlord's agent provided the tracking number. The Landlord's agent testified that the documents were returned to the Landlord approximately 10 days ago, unclaimed..

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents whether or not the Tenant chooses to accept delivery of the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

## **Background and Evidence**

The Landlord's agent gave the following testimony and evidence:

Monthly rent is \$1,300.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 on August 15, 2009. The Tenant also provided the Landlord with \$1,300.00 towards last month's rent. The Landlord's agent testified that the Tenant signed a separate agreement to pay \$50.00 a month for parking.

The Landlord provided a Proof of Service form which attests that on August 16, 2010, at 3:00 p.m., the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit. A witness signed the proof of service form.

The Landlord's agent testified that the Tenant attempted to pay rent for August and September's rent, but the cheque was returned, insufficient funds.

The Landlord's agent requested a monetary order for unpaid rent, late charges, parking fees, bank charges and loss of rent, as follows:

Unpaid rent as at August 1, 2010	\$1,300.00
Late fees for August, 2010	\$20.00
Parking fees for August, 2010	\$50.00
Loss of rent for September, 2010	\$1,300.00
Late fees for September, 2010	\$20.00
Parking fees for September, 2010	\$50.00
Loss of rent for October, 2010	\$1,300.00
Late fees for October, 2010	\$20.00
Parking fees for October, 2010	\$50.00
NSF fees for returned cheque	<u>\$25.00</u>
TOTAL AMOUNT CLAIMED	\$4,135.00

## **Analysis**

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on August 16, 2010. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on August 26, 2010. The Landlord is entitled to an Order of Possession and I make that Order, **effective two days after service of the Order on the Tenant.**

The Landlord's agent has established a monetary claim for unpaid rent and loss of rent in the total amount of \$3,900.00. There is a provision in the tenancy agreement, a copy of which was entered in evidence, for late fees and bank fees. The Landlord did not provide a copy of the parking agreement, and I find that the Landlord has not provided sufficient evidence to support this portion of its claim.

The Landlord accepted an additional deposit in the amount of \$1,300.00 for last month's rent. The Act does not allow for such a deposit, and I find that this was a security deposit.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent and loss of rent	\$3,900.00
Late fees	\$60.00
NSF fees	\$25.00
Recovery of the filing fee	\$50.00
Subtotal	\$4,035.00
Less security deposits	- \$1,950.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$2,085.00</b>

### **Conclusion**

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$2,085.00** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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 12, 2010.

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