



# Dispute Resolution Services

Page: 1

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 for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") in person on September 24, 2010. The Tenant said she received the Landlord's hearing package on October 2, 2010. Even if the Tenant was served late with the Landlord's hearing package, I find that it would not have prejudiced the Tenant's ability to respond to it. As a result, I find that the Tenant was sufficiently served with the Landlord's hearing package in a manner required by s. 89 of the Act.

The Tenant confirmed that she did not serve the Landlord with a copy of her evidence package that she submitted to the Residential Tenancy Branch on October 15, 2010. Consequently, the Tenant's evidence package is excluded pursuant to RTB Rule of Procedure 11.5(b). The Tenant was, however, permitted to refer to this evidence in her oral evidence.

### 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 keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2009. The Landlord said rent was \$610.00 until October 1, 2010 when it was increased to \$629.00. The Tenant said she received something that said her rent would increase to \$620.00 as of October 1, 2010. The Tenant paid a security deposit of \$305.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for September 2010 when it was due and as a result, on September 2, 2010 he posted a 10 Day Notice to End Tenancy for Unpaid Rent dated September 1, 2010 on the rental unit door. The Landlord's witness gave evidence that she did not see the Landlord post the Notice but saw the Notice on

the Tenant's door and saw the Tenant remove the Notice from her door later the same day. The Landlord said rent is still unpaid for September 2010 and October 2010 rent is also unpaid.

The Tenant said she tried to give the Landlord \$300.00 on September 6, 2010 however he would not accept it because he wanted payment in full plus a \$25.00 late fee (which the Landlord denied). The Tenant also claimed that she has been advised by U.S. Customs that she cannot change her address until sometime in late-November when an unidentified person will be escorted to her residence.

## 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 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 September 5, 2010. Consequently, the Tenant would have had to pay the full amount indicated on the Notice or apply to dispute that amount no later than September 10, 2010.

I find that the Tenant has not paid the overdue rent in full 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. Although the Tenant argued that she could be fined by U.S. Customs if she changed her residence, this is not a matter I am able to consider in setting aside a 10 Day Notice to End Tenancy under the Act.

I also find that the Landlord is entitled to recover rent arrears in the amount of \$610.00 for September 2010. In the absence of any corroborating evidence to determine the amount of the rent increase on October 1, 2010 and if that rent increase complied with s. 43 of the Act, I find that the Landlord is not entitled to recover the increased rent for October. Consequently, the Landlord is entitled to unpaid pro-rated rent for the period October 1 – 25, 2010 in the amount of \$491.94 and to a loss of rental income for the period October 26 – 31, 2010 in the pro-rated amount of \$118.06. I also find that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding. In the absence of a written tenancy agreement signed by the Tenant, I find that the Landlord is not entitled to recover late payment fees pursuant to s. 7 of the Regulations to the Act.



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears (Sept. 2010):	\$610.00
Rent arrears (Oct. 1-25, 2010):	\$491.94
Loss of rental income (Oct. 26-31, 2010):	\$118.06
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,270.00
Less: Security Deposit:	<u>(\$305.00)</u>
BALANCE OWING:	\$965.00

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$965.00** 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: October 25, 2010.

---

Dispute Resolution Officer