



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      Landlord MNR, MNSD, FF  
Tenant CNC, MNDC, ERP, PSF, RR, FF, OTHER

### Introduction

This matter dealt with cross applications. For the Landlord a request for 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.

For the Tenant a request to Cancel a Notice to End Tenancy for Cause, a request for a Monetary Order for loss or damage under the Act, to make emergency repairs, have reduced rent for the repairs, provide services or facilities required by law, recover the filing fee for this proceeding and other considerations.

At the start of the hearing the Tenant said they had personally moved out on August 31, 2010, although they had some belongings that were left on and under the deck, that they were going to pick up in September. As a result the application to Cancel the Notice to End Tenancy, the request to reduced rent to make repairs, the emergency repairs application and the request to provide services and facilities are withdrawn/cancelled from the application. The Tenant said they would continue with the monetary claim and the request to return the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 22, 2010. Based on the evidence of the Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the Landlords confirmed they received the hearing package.

The Landlord's agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by posting it in their mail box on September 1, 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 Tenant confirmed they received the hearing package.

## Issues(s) to be Decided

### Landlord

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Tenant

1. Is the Tenant entitled to monetary compensation for loss or damages under the Act and if so How much?

## Background and Evidence

This tenancy started on January 27, 2010 as a 1 year fixed term tenancy with an expiry date of January 31, 2011. Rent is \$1,350.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$675.00 on January 27, 2010.

The Landlord's agent said that the Tenant did not pay \$509.00 of rent for August, 2010 when it was due and as a result, on August 23, 2010 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 23, 2010. The Landlord's agent said the Tenant has unpaid rent for September, 2010 of \$1,350.00.

The Landlord further indicated that the Tenants have moved out as of September 30, 2010. The Landlord said they do not have a forwarding address as of yet.

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

The Landlords also indicated that they have applied for a claim for compensation for the loss of October, 2010 rental income of \$1,350.00. They have just received possession of the rental unit and there are some belongings of the Tenant still in the unit, so they are concerned that they may not be able to rent it for October, 2010.

## Analysis

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With respect to the Tenant's application number 757494. As the Tenants did not attend the hearing and in the absence of any evidence from the Tenants to support the application, the application is dismissed without leave to reapply.

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 on the day it is served if served in person, or on August 23, 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 28, 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 for August, 2010, in the amount of \$509.00 and the unpaid rent for September, 2010 of \$1,350.00. I further find that the Landlord is entitled to recover a loss of rental income to October 10, 2010, in the amount of \$435.48 (\$1,350.00 X 10 of 31 days of October). The Landlord has an obligation to mitigate their 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, they are 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 Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 1,859.00
Loss of Rental Income:	\$ 435.48
Recover filing fee	\$ 50.00
Subtotal:	\$ 2,344.48
Less: Security Deposit	\$ 675.00



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Balance Owing                      \$ 1,669.48

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,669.48 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*.

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Dispute Resolution Officer