



# 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, loss of rent, and estimated costs for cleaning the rental unit; 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 parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents, including the documentary evidence, were mailed to the Tenant by registered mail to the rental unit on October 28, 2010. A copy of the registered mail receipt and tracking number was entered in evidence. The Tenant acknowledged receipt of the Landlord's evidence and the Notice of Hearing documents, by registered mail.

### **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 tenancy began on July 1, 1999. A copy of the tenancy agreement was entered in evidence. The Tenant paid a security deposit in the amount of \$420.00 on June 8, 1999. Current monthly rent is \$1,126.00. The Tenant also pays \$10.00 per month for parking. Rent and parking fees are due on the first day of each month.

The Landlord's agent testified that the building manager served the Tenant in person at the rental property on October 6, 2010. The Tenant agreed that he was served in person on that date at his home.

The Tenant acknowledged that he has not paid rent for the months of September, October or November, 2010. He stated that he fell on financial hard times, but had offered to pay all of the outstanding rent on October 26, 2010, if the Landlord agreed to cancel the Hearing and withdraw its Notice to End Tenancy. The Tenant testified that the Landlord declined his offer.

The Tenant testified that he has not filed an Application to cancel the Notice to End Tenancy, or pay any of the outstanding rent to the Landlord.

In addition to the unpaid rent and loss of rent, the Landlord seeks compensation in the amount of \$400.00 for the estimated costs of cleaning the rental unit after the Tenant moves out.

### **Analysis**

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy in person on October 6, 2010. The Tenant did not pay 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 October 16, 2010. The Landlord is entitled to an Order of Possession and I make that Order. The Landlord's agent asked that the Order be effective November 30, 2010.

The Landlord's agent asked to recover the estimated costs of cleaning the rental unit at the end of the tenancy in the amount of \$400.00 however this application is premature, and unproven. This portion of the Landlord's application is dismissed with leave to reapply.

Based on the testimony of both parties, the Landlord's agent has established a monetary claim for unpaid rent and loss of rent for the months of September, October and November, 2010, in the total amount of \$3,408.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest, towards partial satisfaction of the Landlord's monetary claim. Interest in the amount of \$42.75 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:

Un paid rent and loss of rent	\$3,408.00
Recovery of the filing fee	\$50.00
Subtotal	\$3,458.00
Less security deposit	- \$462.75
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$2,995.25</b>

## **Conclusion**

I hereby grant the Landlord an Order of Possession **effective 1:00 p.m., November 30, 2010**. 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 **\$2,995.25** 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: November 23, 2010.

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