



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

### Background and Evidence

This month-to-month tenancy started on May 1, 2010. The Landlord (R.M.) said rent is \$850.00 per month however the Parties' tenancy agreement says it is \$840.00 per month. The Tenant paid a security deposit of \$420.00 at the beginning of the tenancy.

The Landlord said he served the Tenant on October 6, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2010 by posting it to the rental unit door but the Tenant returned it to him. The Tenant denied that she received a copy of this Notice or that she returned it to the Landlord. The Notice stated that there were rent arrears of \$850.00 that were due on October 1, 2010.

The Landlord initially said the Tenant paid only \$100.00 in October 2010 but then admitted that he received a payment of \$425.00 from the Ministry on behalf of the Tenant as well as two cash payments from the Tenant totalling \$300.00. The Landlord said that he only applied \$100.00 of the cash payments to rent for October 2010 because the Tenant had previous rent arrears of \$350.00. The Tenant said she made 2 payments of \$200.00 each to the Landlord in October 2010.

The Landlord also claimed that the Tenant did not pay rent for November 2010 but admitted that he would not accept her payment of \$850.00 on or about November 10, 2010 because he wanted all of the arrears paid.



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## Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) (1) that they served the Tenant with an enforceable 10 Day Notice to End Tenancy for unpaid rent; (2) that there are rent arrears; and (3) that the arrears set out on the Notice have not been paid within 5 days of the Tenant receiving the Notice (as required by s. 46 of the Act).

However, given the Tenant's evidence that she did not receive a 10 Day Notice to End Tenancy for Unpaid Rent dated October 6, 2010 and in the absence of any corroborating evidence from the Landlords that they served one on the Tenant, I find that the Landlords have not provided sufficient evidence to show that the Tenant was served with a 10 Day Notice dated October 6, 2010 and as a result, their application for an Order of Possession is dismissed with leave to reapply.

The Landlords did not apply for unpaid rent for any period prior to October 2010 and as a result, I make no finding in that regard. The Landlords claimed that the Tenant made payments totaling \$725.00 in October 2010 however the Tenant said she made payments of \$825.00. The Tenant said she paid her share of the rent payments in cash however the Landlords never gave her a receipt (which the Landlords did not dispute). Given the contradictory evidence of the Tenant on this issue and in the absence of any corroborating evidence from the Landlords (such as a receipt or other record of payments), I find that there is insufficient evidence to conclude that the Tenant has rent arrears of \$115.00 for October 2010 and instead I find that there are rent arrears of \$15.00 for October 2010.

I also find that rent is unpaid for the month of November 2010 because the Landlords would not accept the Tenant's rent payment (which included a cheque from the Ministry) when it was tendered to the Landlords. Consequently, I find that rent is unpaid for November 2010 in the amount of \$840.00. Given that the Landlords have not been successful on this application for an Order of Possession and that rent is unpaid for November only because the Landlords refused to accept it, I find that it would not be appropriate to grant the Landlord's application to recover the cost of the filing fee from the Tenant and that part of their application is dismissed without leave to reapply.

## Conclusion

The Landlords' application for an Order of Possession is dismissed with leave to reapply. The Landlords' application to recover the filing fee is dismissed without leave to reapply. A Monetary Order in the amount of **\$855.00** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by



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the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 22, 2010.

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Dispute Resolution Officer