



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNR, MNSD, MND, MNDC, FF

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for unpaid rent, damage to the rental unit, an Order of possession, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

### Preliminary Matters

The landlord did not proceed with the portion of the application requesting compensation for damaged to the rental unit or damage or loss under the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on May 1, 2010; rent is \$1,250.00 due on the first day of each month. A deposit in the sum of \$625.00 was paid May 1, 2010.

The tenants have not paid rent owed from September to December, 2010, inclusive. A November payment was returned NSF; a receipt for use and occupancy had been issued.

The landlord stated that on October 4, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 17, 2010, was served by posting to the door; during the hearing the tenant confirmed receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,250.00 within five days after the tenants are assumed to have received the Notice. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on October 7, 2010.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 7, 2010, I find that the earliest effective date of the Notice is October 17, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 17, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights therefore; pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$5,000.00 for September to December, 2010, inclusive and that the landlord is entitled to compensation in that amount. The tenant did not dispute the amount of rent owed.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$625.00, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after it is served to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$5,050.00, which is comprised of \$5,000.00 in unpaid September to December, 2010, rent inclusive, and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$625.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$4,425.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: December 20, 2010.

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