



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

### Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

### Background and Evidence

This month-to-month tenancy started on October 1, 2010. Rent is \$850.00 per month payable in advance on the 1<sup>st</sup> day of each month plus 40% of the utilities for the rental property. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlords said the Tenant did not pay utilities for October 2010 or rent for November 2010 when it was due and as a result, on November 13, 2010 the Landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the rental unit door. The Landlords said their neighbour witnessed them posting the Notice on the door and signed a written statement to that effect. The Landlords said they also sent a copy of this Notice to the Tenant by registered mail on November 14, 2010 and witnessed the letter carrier put the Notice of the registered mail on the Tenant's door knob.

The Tenant denied that a copy of the 10 Day Notice was posted on her door as the Landlords alleged. The Tenant said that it was the Landlords' practice to put her mail under her door and claimed that she did not receive notification from Canada Post of the 10 Day Notice sent by registered mail until December 8, 2010 when she found it in a mail box at the front of the rental property with other mail. The Landlords claimed that the Tenant was aware that her mail was in the box at the front of the rental property and

claimed that she collected it from there during the previous 2 month period. The Tenant admits that she has not paid the rent or utility arrears set out on the Notice and now is in arrears of utilities for November 2010 and rent for December 2010.

## 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 November 16, 2010) or alternatively, 5 days after it was mailed (or on November 19, 2010).

However, the “deemed service” provisions under s. 90 of the Act are rebuttable. That means that if there is sufficient evidence to show that a document was delivered on a different date, then the “deemed date of service” may not apply. In this case, the Tenant argued that she did not receive a copy of the registered mail notification (regarding the 10 Day Notice) until December 8, 2010. Consequently, the Tenant also argued that she still had until December 14, 2010 to pay the rent and utility arrears set out on the 10 Day Notice which would have the effect of cancelling it.

Given the corroborating evidence of the Landlords, I find on a balance of probabilities that the Tenant did receive a Canada Post notification on her door knob on or about November 15, 2010 (regarding the 10 Day Notice to End Tenancy) as alleged by the Landlords. Given the corroborating evidence (of the Landlord’s witness), I also find on a balance of probabilities that the Landlords posted the same 10 Day Notice on the rental unit door on November 13, 2010. Consequently, I find pursuant to s. 90 of the Act that the Tenant received the 10 Day Notice dated November 13, 2010 on November 19, 2010 *at the latest*. This means that the Tenant would have had to pay the arrears or apply to dispute that amount no later than November 24, 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(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlords are entitled to recover rent arrears for November in the amount of \$850.00, for December 1 – 13, 2010 in the pro-rated amount of \$356.45 to utility arrears in the amount of \$153.39 as well as the \$50.00 filing fee for this proceeding.



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice. Consequently, the earliest the Tenant could have ended the tenancy (had she given written notice on November 19, 2010) would have been December 31, 2010. As a result, I find that the Landlords are entitled to recover a loss of rental income for December 14 – 31, 2010 in the pro-rated amount of \$493.55,

I order the Landlords 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 Landlords will receive a monetary order for the balance owing as follows:

Rent arrears - November:	\$850.00
Rent arrears – Dec. 1-13:	\$356.45
Loss of rent – Dec. 14-31:	\$493.55
Utility arrears:	\$153.39
Filing fee:	\$50.00
Subtotal:	\$1,903.39
Less: Security Deposit:	(\$425.00)
Balance Owing:	\$1,478.39

## Conclusion

In the absence of any evidence from the Landlords to support their claim for compensation for damages to the rental unit, it is dismissed with leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,478.39** have been issued to the Landlords. 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: December 13, 2010.

---

Dispute Resolution Officer