



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, FF, O

### Introduction

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and for other considerations.

The Landlord agent said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery mail on December 18, 2010. Based on the evidence of the Landlords’ agent, I find that the Tenant was served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant’s absence.

The Landlord agent said the Landlords made a mistake when they completed the application. She said they did not check off that they wanted to retain the security deposit as partial payment of the unpaid rent. The Landlords’ agent requested that the application be amended to include the security deposit as partial payment of the unpaid rent. The request for amendment was granted.

The Landlord’s agent said the Tenant moved out on December 24, 2010, therefore the Landlords are withdrawing the application for an Order of Possession as they have possession of the rental unit.

### Issues(s) to be Decided

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

### Background and Evidence

This tenancy started on August 1, 2009 as a fixed term tenancy with an expiry date of January 31, 2010 and renewed after January 31, 2010 as a month to month tenancy. Rent was \$500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$250.00 in February, 2010.

The Landlord said that the Tenant did not pay \$500.00 of rent for each month of November, 2010, December, 2010 when it was due and as a result, on December 2, 2010 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2010. As well the Landlords' agent said the Tenant has unpaid utilities for 1/3 of the cable and internet service in the amount of \$271.56 for November and December, 2010. The Landlord's agent said the Landlord did not provide receipts or invoices to establish or verify the amount of the utility claim.

## Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for November, 2010 and December 2010, therefore I find in favour of the Landlord for the unpaid rent of \$1,000.00 for November and December, 2010. As well the Landlord's did not provide any verification of their claim of \$271.56 for unpaid utilities, therefore I dismiss the claim for unpaid utilities on the grounds that the amount was not established and verified.

As the Landlords have 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 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 Landlord will receive a monetary order for the balance owing as following:

	Rent arrears: (\$500.00 X 2)	\$1,000.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,050.00
Less:	Security Deposit	\$ 250.00
	Subtotal:	\$ 250.00
	Balance Owing	\$ 800.00



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Page: 3

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## Conclusion

A Monetary Order in the amount of \$800.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: 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: January 10, 2011.

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Residential Tenancy Branch