



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR, MNR, FF

### 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 to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 12, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on December 1, 2010 as a 1 year fixed term tenancy with an expiry date of November 30, 2011. Rent is \$2,300.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,150.00 on November 4, 2009 from a previous tenancy.

The Landlord said that the Tenant did not pay \$2,300.00 of rent for December, 2010 when it was due and as a result, on December 14, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 14, 2010 on the Tenants' door of the rental unit. The Landlord said the Tenants have unpaid rent for January, 2011 of \$2,300.00 as well.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord does not know what the Tenants' plans are. The Landlord said he also is seeking to recover the \$50.00 filing fee from the Tenant for this proceeding.

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 pay the overdue rent or apply for dispute resolution. If the 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 Tenants are deemed to have received the Notice to End Tenancy three days after the Notice was posted on the Tenants' door, or on December 17, 2010. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 22, 2010.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for December, 2010 in the amount of \$2,300.00. I further find that the Landlord is entitled to recover unpaid rent for January, 2011 in the amount of \$2,300.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 4,600.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$ 4,650.00
Less:	Security Deposit	\$1,150.00	
	Subtotal:		\$ 1,150.00
	Balance Owing		\$ 3,500.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$3,500.00 have been issued to the Landlord. 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: January 25, 2011.

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Residential Tenancy Branch