



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, 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's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 1, 2011. According to the Canada Post online tracking system, a notification card was delivered to the Tenant on June 2, 2011 however the Tenant did not pick up the mail. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if the recipient fails to pick up the mail. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issue(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 keep the Tenant's security deposit?

### Background and Evidence

This fixed term tenancy started on November 1, 2010 and expires on October 31, 2011. Rent is \$680.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$340.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for May 2011 when it was due and as a result, on May 6, 2011 the Landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 6, 2011 on the rental unit door. The Landlord's agent said that the Tenant has removed many of his belongings from the rental unit but still has furnishings and other belongings there and has not returned any keys to the Landlord.

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 (if they believe the amount is not owed) 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 will end on the effective date of the Notice and they must vacate the rental unit at that time. I find that the Landlord posted a 10 Day Notice on the rental unit door on May 6, 2011. Pursuant to s. 90 of the Act, the Tenant is deemed to have received the Notice 3 days later or on May 9, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than May 16, 2011 (given that the 14<sup>th</sup> fell on a non-business day).

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 Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$680.00 for May 2011, pro-rated rent of \$476.00 for June 1 – 21, 2011 and a loss of rental income in the pro-rated amount of \$204.00 for June 22 – 30, 2011. I also find that the Landlord is entitled to recover 2 late fees of \$25.00 each pursuant to a term of the Parties' tenancy agreement to that effect as well as the \$50.00 filing fee for this proceeding. In the absence of any evidence from the Landlord that it incurred bank fees for the Tenant's NSF cheque (as required by s. 7 of the Regulations to the Act), I find that the Landlord is not entitled to recover that amount and that part of its application is dismissed without leave to reapply.

I order the Landlord 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 follows:

Rent arrears:	\$1,156.00
Loss of rental income:	\$204.00
Late Fee(s):	\$50.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,460.00
Less: Security Deposit:	(\$340.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$1,120.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,120.00** 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: June 21, 2011.

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Residential Tenancy Branch