



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, 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 in person on July 21, 2011 with the Application and Notice of Hearing (the "hearing package"). 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 and utility 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 15, 2010 and expires on November 15, 2011. Rent is \$590.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$300.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for July 2011 when it was due and had utility arrears (for hydro) and as a result, on July 6, 2011, the Landlord's agent served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 6, 2011. The Landlord's agent said the Tenant has not made any payments since he was served with the 10 Day Notice and now has rent arrears for August 2011.

The Landlord's agent said the hydro account was originally in the Tenant's name however the power was cut off because the Tenant did not pay the account and as a result, on or about April 1, 2011 the Landlord had the hydro account put into its name. The Landlord's agent said the Tenant was given a written demand on July 6, 2011 to pay an outstanding balance of \$439.63 (which was incorrect).

### 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 Tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in person on July 6, 2011. I find that the Tenant did not pay the rent or utility arrears alleged on that Notice and did not dispute that those amounts were owed by applying 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 for July and August 2011 in the amount of \$1,180.00, unpaid hydro expenses in the amount of \$79.86 (to and including June 28, 2011) as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) to keep the Tenant's security deposit in partial payment of the rent and utility arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,180.00
Hydro arrears:	\$79.86
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,309.86
Less: Security Deposit:	<u>(\$300.00)</u>
Balance Owing:	\$1,009.86

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,009.86** 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: August 22, 2011.

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Residential Tenancy Branch