



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 31, 2011. Based on the evidence of the Landlord, I find that the Tenants was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### 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 March 15, 2011 as a month to month tenancy. The Landlord's agent originally said she understood the tenancy started in November, 2010, but during the Hearing her brother confirmed the tenancy started on March 15, 2011. Rent is \$650.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$325.00 on March 15, 2011. The Landlord said there was no written tenancy agreement and the Tenant said she had a written tenancy agreement. No tenancy agreement was submitted in the evidence although the Tenant said she would fax a copy in immediately after the conference call.

The Landlord said that the Tenant did not pay \$650.00 of rent for June, 2011 and \$650.00 for July, 2011 when it was due and as a result, on July 20, 2011 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 20, 2011 on the door of the Tenants' rental unit. The Landlord submitted a signed letter from a witness

indicating the Witness saw the Landlord post the 10 Day Notice to End Tenancy on the Tenants' door. The Landlord said the Tenants have unpaid rent for August and September, 2010 in the amount of \$650.00 for each month totalling \$1,300.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord said she wants to end the tenancy as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said the Landlord served the wrong people with the hearing package as she said her roommate is not C.S. who is her husband, but her roommate is T.V. The Occupant T.V. said he had been living at the rental unit since June, 2011 and he saw the 2 month Notice to End Tenancy, but he did not see the 10 Day Notice to End Tenancy.

The Landlord said there is no written tenancy agreement, but it was her understanding that the persons named on the 10 Day Notice to End Tenancy are the correct Tenants.

The Tenant continued to say that she did not receive the 10 Day Notice to End Tenancy and she has paid the June and July, 2011 rent. The Tenant said that she has not paid the August and September, 2011 rent in the amount of \$1,300.00 total. The Tenant continued to say that she thought she didn't have to pay the September, 2011 rent because she received the 2 Month Notice to End Tenancy prior to the 10 Day Notice to End Tenancy, which has a provision for one month free rent as compensation for ending the tenancy. As well, the Tenant said she thought her security deposit would go towards the August, 2011 rent so she did not pay the August, 2011 in the amount of \$650.00.

The Landlord said she has not receive any payments since May, 2011.

### Analysis

There was much contradictory testimony from the Landlord and the Tenant during the hearing. I accept the Landlord's testimony and evidence that a 10 Day Notice to End Tenancy for unpaid rent dated July 20, 2011 was served to the Tenants on July 20, 2011 by posting it on the Tenants door. As well I accept the Landlords testimony and evidence that the Tenants of the rental unit are as indicated on the 10 Day Notice to End Tenancy for unpaid rent; therefore I accept that the correct Tenants have been served the hearing packages.

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 3 days after it was posted, or on July 23, 2011. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 28, 2011.

I accept the Landlord's testimony and evidence that she served the Tenants with a 10 Day Notice to End Tenancy on July 20, 2011 and I find that the Tenants have not paid the overdue rent and has not applied for dispute resolution. The Tenant testified that she paid the June and July, 2011 rent, but the Tenant did not provide any corroborative evidence to support her testimony. Consequently, I find pursuant to s. 55(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 Tenant.

As I have accepted the 10 Day Notice to End Tenancy for unpaid rent and the Landlord testified that no additional payments have been received and the Tenant has not provided any evidence that the rent was paid for June and July, 2011 and the Tenants have not make an application to dispute the 10 Day Notice to End Tenancy for unpaid rent ; I find that the Landlord is entitled to recover unpaid rent for June, July, August and September, 2011 in the amount of \$2,600.00.

As the Landlord has been successful in this matter, she 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 Tenant's security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,600.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,650.00
Less:	Security Deposit	\$325.00	
	Subtotal:		\$ 325.00
	Balance Owing		\$2,325.00

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,325.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: 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*.

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Residential Tenancy Branch