



# 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 hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55;
3. An Order to retain the security and/or pet deposit pursuant to Section 38; and
4. An Order to recover the filing fee pursuant to Section 72.

I accept that the tenant was properly served with the Notice to End Tenancy and the Application for Dispute Resolution hearing package.

Both parties attended the hearing. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **Issue(s) to be Decided**

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

### **Summary of Background**

The landlord testified that the 10 day Notice to End Tenancy was served on the tenants on August 3, 2011, that Notice sought rent due August 1, 2011 in the sum of \$850.00. The landlord testified that on August 9, 2011 the tenants paid \$460.00 and on August 22, 2011 the tenants paid a further \$440.00 for a total of \$900.00 towards the rent due on August 1, 2011 of \$850.00. The landlord testified that receipts were issued to the tenants for these payments. The landlord testified that the words "for use and

occupancy only” had not been added yet. The landlord also testified that while receipts for the payments were issued she could not recall whether they contained the words “for use and occupancy only”.

The landlord testified further that she is no longer seeking August rent but is seeking rent for September 1, 2011 which she says has not been paid. In her Application for Dispute Resolution the landlord also seeks late payment fees of \$25.00 for late rental payments made during August and September 2011 as well as \$850.00 for loss of rent for September, 2011.

### **Analysis and Findings**

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

In this case I find there has been insufficient evidence supplied to show that the tenants were informed that their payment was not being accepted to reinstate the tenancy but only for the purposes of use and occupancy. Under these circumstances I find that in accepting the payments without informing the tenants that the tenancy was still going to end, the landlord has reinstated the tenancy.

Having found that the tenancy was reinstated it would be necessary to issue and serve a new 10 day Notice to End Tenancy for any subsequent late payments of rent.

I therefore dismiss the landlord’s claim for an Order of Possession.

### **Monetary Order**

#### ***Rental Arrears***

With respect to the rental arrears claimed for September I find that the landlord has submitted sufficient evidence to show that rent was not paid and I therefore grant the landlord a monetary award in the sum of \$850.00 representing rent due for September 1, 2011.

#### ***Late payment fees***

As the landlord has failed to supply sufficient evidence to show that the tenants agreed to pay late payment fees I will not grant the landlord's application for late payment fees.

***Security Deposit***

As this tenancy is not ending at this time, I will not grant the landlord permission to retain the security deposit and interest to the date of this decision in partial satisfaction of the rental arrears.

***Filing Fees***

I find that the landlord is entitled to recover the filing fees paid for this application.

***Calculation of total Monetary Award***

Rental Arrears for September 2011	\$850.000
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$900.000

**Conclusion**

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial 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: September 20, 2011.

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Residential Tenancy Branch