



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, 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, for compensation for damages to the rental unit, 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to the rental unit address on August 9, 2012. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later even if they refuse 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 compensation for repair expenses?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on June 15, 2012. Rent is \$900.00 per month payable in advance on the 15<sup>th</sup> day of each month. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for the period, July 15 – August 14, 2012, when it was due and as a result, on July 15, 2012, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (dated July 25, 2012) by posting it to the rental unit door. The Landlord said the Tenant has not paid the overdue rent and now rent for the period, August 15 – September 14, 2012, is outstanding. The Landlord also claimed that when she posted the 10 Day Notice, she found damage to the front entrance door and broken windows.

### 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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 15, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days later or on July 18, 2012. Consequently, the Tenant would have had to pay the amount of rent stated on the Notice or (if the amount was not owed) apply to dispute that amount no later than July 23, 2012. 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 for the period, July 15 – August 14, 2012, in the amount of \$900.00 as well as for the period, August 15 – September 14, 2012, in the amount of \$900.00. I find that the Landlord has not provided sufficient details about the extent of the window or repairs nor has she provided any invoices or estimates showing the cost of those repairs. In other words, I find that the Landlord's claim for compensation for repairs is premature and it is dismissed with leave to reapply. I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant 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 of \$450.00 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing of \$1,400.00.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,400.00** 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: September 10, 2012.

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Residential Tenancy Branch