



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, an Order to retain the tenant's security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on June 15, 2009. Mail receipt numbers were provided. The tenants refused to collect these and were deemed to be served the hearing documents on June 20, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave their testimony and was provided the opportunity to present their evidence orally, in writing, and in documentary form. At the outset of the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the Act.

There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.



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Issues(s) to be Decided

- Has the landlord established a monetary claim due to the rent arrears?
- If so, is the landlord entitled to retain the tenants' security deposit in partial payment towards the rent arrears?
- Is the Landlord entitled to end the tenancy?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy started on June 01, 2007. This was a fixed term tenancy for one year which reverted to a month to month tenancy at the end of the first year. Rent is \$815.00 per month payable on the first of each month. The tenants paid a security deposit of \$400.00 on May 14, 2007.

The tenants were late with their rent for June, 2009 and the landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 03, 2009. The tenants had five days to pay the outstanding rent or apply for Dispute Resolution. The tenants did not pay the outstanding rent for June including \$25.00 late fees until June 23, 2009. The landlord accepted this payment for use and occupancy only and communicated this in writing to the tenants. The tenants have not paid rent for July, 2009 of \$815.00 and have also incurred a late fee of \$25.00. The landlords have requested a Monetary Order to recover the outstanding rent and late fees and wish to retain the tenant's security deposit in partial payment of the arrears.

The landlord has requested an Order of Possession to take effect as soon as possible.



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Analysis

The tenants have failed to appear at today's hearing and due to the lack of any evidence from them I find that there is no dispute of the fact that the tenants owed arrears of one months rent that was due on June 01, 2009. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days but was paid in full by June 23, 2009. However, payment was accepted by the landlord for use and occupancy only. Therefore the Ten-Day Notice still remained in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. The tenants have also failed to pay their rent for July, 2009. Based on the testimony and evidence of the landlord, I find that the landlord is entitled to an Order of Possession.

Due to the undisputed evidence presented at the hearing by the landlord I find that the tenants owe rent and late fees for July, 2009. Based on this I uphold the landlords application for a Monetary Order. The landlord may retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears.

As the landlord has been successful with their application I find that they are entitled to recover the filing fee for the cost of this application.

The landlords are entitled to a Monetary Order as follows:

Rent for July	\$815.00
Filing fee	\$50.00
Less security deposit and accrued Interest	(-\$409.87)
Total amount due to the landlord	\$480.13



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Conclusion

A Monetary Order in the amount of **\$480.13** has been issued to the landlord and a copy of it must be served on the tenant. If the amount of the order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

I hereby issue an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: July 06, 2009.

Dispute Resolution Officer