



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, 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 to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

The Landlord served the Tenant with the Application and Notice of Hearing by registered mail to the rental unit address on July 21, 2009. According to the Canada Post online tracking system, a notification card was delivered to the Tenant on July 22, 2009 but he did not pick up the hearing package. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent 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 1, 2008 and expires on October 31, 2009. Rent is \$1,215.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$607.50 on October 28, 2008.

The Landlord said the Tenant did not pay July 2009 rent when it was due and as a result, on July 6, 2009, he posted a 10 Day Notice to End Tenancy for Unpaid Rent on the Tenant's door. The Landlord said the Tenant did not pay the arrears until September 1, 2009. The Landlord also said that there are currently no rent arrears.

### 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 amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things,



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

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 must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on July 9, 2009. As a result, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than July 15, 2009. I find that the Tenant did not pay the rent arrears indicated on the Notice until September 1, 2009 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 at 1:00 p.m. on September 30, 2009.

As there are no rent arrears, that part of the Landlord's application is dismissed. As the Landlord has been successful in this matter, he is entitled to recover the \$50.00 filing fee for this proceeding and pursuant to s. 72 of the Act, I ORDER that he may deduct that amount from the Tenant's security deposit. The Landlord's application to keep the balance of the Tenant's security deposit is dismissed with leave to reapply.

## Conclusion

An Order of Possession to take effect on September 30, 2009 has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession may be enforced in the Supreme 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 04, 2009.

---

Dispute Resolution Officer