



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, a Monetary Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 02, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on September 07, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Whether the Landlord is entitled to an Order of Possession?
- Whether the Landlord is entitled to a Monetary Order to recover unpaid rent?
- Whether the landlord is entitled to keep all or part of the security deposit in partial payment towards any rent arrears?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?



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## Background and Evidence

This tenancy started on August 01, 2005. Rent is \$967.00 per month payable on the 1<sup>st</sup> of each month. The tenant paid a security deposit on August 01, 2005 of \$447.50. The tenant did not paid rent for August, 2009 by the due date and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent on August 10, 2009. The tenant failed to pay rent for September, 2009 and another 10 Day Notice was issued On September 03, 2009 to recover the rent for August and September. On September 28 the tenant paid \$999.00 towards his outstanding rent and on September 29 he paid \$1,000.00. These payments were accepted by the landlord for use and occupancy only. The tenant failed to pay rent for October, 2009 on the day it was due and another 10 Day Notice was issued on October 07, 2009. The tenant paid \$595.00 on October 19, 2009 which was accepted by the landlord for use and occupancy only. To date the tenant owes rent of \$372.00 for the balance of Octobers rent.

The landlord has requested an Order of Possession and a Monetary Order to recover the unpaid rent and has requested to keep part of the tenants' security deposit towards the outstanding rent.

## Analysis

The tenant has not appeared at the hearing to dispute the landlords' evidence. Therefore, I find that the tenant owes rent arrears of \$372.00 for October, 2009. Payment of the whole amount of the outstanding 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 of receiving the first 10 day notice and the payments received after the five days were received for use and occupancy only and the landlord indicated this on the rent receipts. Therefore, the Ten-Day Notice still remains in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. Based on the testimony and documentation of the landlords' agent, I find that the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.



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There is no dispute that the tenant owes the landlord rent to the sum of \$372.00. Based on this I uphold the landlords' application to retain part of the tenants' security deposit in partial payment towards the rent arrears pursuant to s.38 of the *Act*. As the tenants' security deposit covers the full amount of the arrears no Monetary Order will be issued.

As the landlord has been successful with their application I find that they are entitled to recover the filing fee of \$50.00 for the cost of this application pursuant to s. 72(1) of the *Act*.

Rent arrears	\$372.00
Less security deposit and accrued interest	(-\$463.35)
Total amount left on tenants security deposit	<b>(\$41.35)</b>

## Conclusion

An Order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **two days** after service. 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: October 20, 2009.

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Dispute Resolution Officer