



# 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 as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit and pet damage deposit.

The Landlord served the Tenants by registered mail on September 18, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, a notification card was delivered to the Tenants on September 21, 2009 however they did not pick up the hearing package. The Landlord said that she personally served the returned hearing packages on the Tenants on or about October 13, 2009. I find pursuant to s. 89 of the Act that the Tenants were properly served with the Notice of this hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenants' security deposit and pet damage deposit?

### Background and Evidence

This tenancy started on July 1, 2008. Rent is \$850.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$425.00 on June 13, 2008 and a pet damage deposit of \$200.00 on June 29, 2008.

The Landlord claims that the Tenants did not pay rent for September 2009 when it was due and as a result, on September 2, 2009, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated September 2, 2009 on the Tenants' door. The Landlord said that the Tenants have made the following payments:

September 3, 2009:	\$480.00
September 11, 2009:	\$100.00
October 2, 2009:	\$270.00
October 15, 2009:	<u>\$710.00</u>
Total Payments:	\$1,560.00



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

## 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, 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 Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on September 5, 2009. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than September 10, 2009.

I find that the Tenants did not pay the total amount indicated on the Notice within 5 days of receiving the 10 Day Notice and that they have not applied for dispute resolution. Consequently, I find that the Landlord is entitled to an Order of Possession pursuant to s. 55(2)(b) of the Act to take effect 48 hours after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears for September and October 2009 in the amount of \$140.00, unpaid rent for November 1-3, 2009 in the amount of \$85.00 and a loss of rental income for the period November 4 – 15, 2009 in the amount of \$198.33. The Landlord may reapply for a further loss of rental income if necessary.

I also find that the Landlord is entitled to recover 3 late payment fees of \$20.00 each pursuant to a term in the tenancy agreement to that effect as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep **\$533.33** of the Tenants' security deposit and pet damage deposit in payment of the rent arrears.

## Conclusion

An Order of Possession to take effect 48 hours after service of it on the Tenants been issued to the Landlord. A copy of the Order must be served on the Tenants and 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: November 03, 2009.

---

Dispute Resolution Officer