



# 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 the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The landlord also requested retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

### Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order?
3. Retention of the security deposit.
4. Award of the filing fee.

### Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced July 15, 2005. The tenant is currently required to pay rent of \$798.99 on the 1<sup>st</sup> day of every month. The tenant paid a \$345.00 security deposit at the commencement of the tenancy. On December 10, 2009 the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the tenant's door. The Notice indicates that rent of \$798.99 was outstanding and had an effective vacancy date of December 20, 2009. The tenant did not pay the outstanding rent or dispute the Notice within 5 days of receiving the Notice.

The landlord explained that the tenant still resides in the rental unit and the requested an Order of Possession effective as soon as possible and claimed that the landlord has also lost rent for January and February 2010.

The tenant acknowledged he owes the landlord for December and January and claimed to have the funds available to pay rent for February 2009. The tenant explained that he has experienced financial difficulties recently and has two children that reside with him every other day. The landlord responded by stating that the tenant has made several promises to pay in the past and has not kept those promises.

### Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and must vacate the rental unit. In this case, the tenant did not dispute the Notice or pay the outstanding rent within five days.

Although the Notice indicates the tenancy ends effective December 20, 2009, since the Notice was posted on the door, the tenant was deemed to have received the Notice three days later; therefore, the effective date should read December 23, 2009. An incorrect effective date on the Notice does not invalidate the Notice. Rather, the effective date is automatically changed to comply with the Act. Accordingly, I find the tenancy legally ended on December 23, 2009 and since the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession.

The Act does not provide a basis for me to decline the landlord's request for an Order of Possession based on the tenant's financial difficulty or personal circumstances. Therefore, I provide an Order of Possession for the landlord with this decision effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

I am satisfied that the tenant failed to pay rent for December 2009 and the landlord incurred a loss of rent for the month of January 2010. As the month of February 2010 has not yet ended, the landlord's loss of rent for February 2010 is not yet determinable. Therefore, I award the landlord \$798.99 for unpaid rent for the month of December 2009 and \$798.99 for loss of rent for the month of January 2010.

I grant the landlord's request to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed to the landlord. As the landlord was successful with this application, I also the landlord's request to recover the filing fee paid for this application from the tenant.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – December 2009	\$ 798.99
Loss of rent – January 2010	798.99
Filing fee	50.00
Less: security deposit and interest	<u>(357.22)</u>
Monetary Order	<u>\$ 1,290.76</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord and the landlord has been provided a Monetary Order for the balance of \$1,290.76 to serve upon the tenant.

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: February 12, 2010.

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Dispute Resolution Officer