



# 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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 20, 2010 to the rental unit address. The Landlord said the hearing packages were returned to her unclaimed. Section 90 of the Act deems a document delivered by mail to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This fixed term tenancy started on April 1, 2010 and expires on March 31, 2011. Rent is \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$600.00 on March 20, 2010.

The Landlord said the Tenants had rent arrears of \$200.00 for June 2010 and failed to pay the rent owed for the months of July and August 2010. Consequently, on August 4, 2010, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 4, 2010 by registered mail to the rental unit address but it was returned to her unclaimed. The Landlord said she also sent a copy of this Notice to the Tenants by e-mail. The Landlord said she last time she spoke to the Tenants was on August 16, 2010 when they approached her for a rent reduction. The Landlord also said the Tenants have made no payments on the arrears and have not paid rent for September or October 2010.

## 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 overdue rent 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 they 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 5 days after it was mailed or on August 25, 2010. Consequently, the Tenants would have had to pay the amount indicated on the Notice or apply to dispute that amount no later than August 30, 2010.

I find that the Tenants have not paid the overdue rent and have 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 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears in the amount of \$2,600.00 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$2,600.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,650.00
Less: Security Deposit:	(\$600.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$2,050.00

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$2,050.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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 06, 2010.

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Dispute Resolution Officer