



# 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 a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to retain the Tenant's security deposit in partial payment of these amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail November 25, 2010. 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 Tenant's 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 compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2005 as a fixed term tenancy with an expiry date of March 31, 2006 and then renewed on a month to month basis. Rent is \$1,025.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$475.00 on September 7, 2005.

The Landlord said that the Tenants did not pay \$1,025.00 of rent for June, 2010 when it was due and as a result, on November 4, 2010 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2010, to the Tenants at the rental unit. The Landlord said the Tenants have paid rent arrears for November and December and she requested to amend her application for the unpaid rent of \$1,025.00 for June, 2010 and a late fee of \$25.00 and a NSF fee of \$25.00. The Landlord said her adjusted claim is \$1,075.00. In addition the Landlord requested an Order of Possession at the hearing.

The Landlord continued to say that the Tenants are living at the rental unit and she has told the Tenants if they paid their rent and late fees the tenancy can continue.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding from the Tenants.

## 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 pay the overdue rent or apply for dispute resolution. If the 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 Tenant is deemed to have received the Notice to End Tenancy on the day it was served to them, or on November 4, 2010. Consequently, the Tenants would have to pay the amount stated on the Notice or apply to dispute that amount no later than November 9, 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 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for June, 2010, in the amount of \$1,025.00 and the late fee of \$25.00 and the bank charge of \$25.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants 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 plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,025.00	
	Late fee	\$ 25.00	
	Bank charges	\$ 25.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,125.00
Less:	Security Deposit	\$ 475.00	
	Accrued interest	\$ 16.83	
	Subtotal:		\$ 491.83
	Balance Owing		\$ 633.17



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## Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$633.17 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*.

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