



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

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## Decision

### **Dispute Codes:**

OPR

MNR

MNDC

MNSD

FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Landlord’s agent and witness gave affirmed evidence and this matter proceeded on its merits.

### **Issue(s) to be Decided**

This is the Landlord’s application for an Order of Possession for Unpaid Rent; a monetary order for unpaid rent for the month of April, together with a late fee; a monetary order for loss of rent for the month of May; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Landlord’s application.

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the first page of a residential tenancy agreement which was signed by the parties on October 20, 2007, indicating a monthly rent of \$950.00 due on the first of the month. The Tenants paid a security deposit of \$412.50 to the Landlords; and
- A copy of page one of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 2, 2009, with an effective vacancy date of April 12, 2009 for \$750.00 in unpaid rent.

The Landlord's witness testified that he served the Tenant JN with a copy of the Notice to End Tenancy on April 2, 2009, by handing it to her at the rental unit.

The Landlord's agent testified that she served the Tenant JN with the Notice of Hearing documents on April 17, 2009 personally, at the rental unit.

### Analysis

Sections 88 and 89 of the Act determine the method of service for documents. The Landlords have applied for a Monetary Order which requires that the Landlord serve each Tenant as set out under Section 89(1). In this case only one of the two Tenants has been personally served with the Notice of Hearing documents. As service upon the Tenant ST of the Notice of Hearing documents has not been proven, the monetary claim against the Tenant ST is dismissed without leave to reapply. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the Tenant TA who has been properly served with Notice of Hearing documents.

The Landlords have requested an Order of Possession against both Tenants. Section 89(2) of the Act determines that the Landlords may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the Tenants' residence with an adult who apparently resides with the Tenant. As both Tenants are signatories to the tenancy agreement, I have determined that both parties have been

sufficiently served with the portion of the Application for Dispute Resolution relating to Section 55 of the Act, requesting an Order of Possession.

The Tenants did not attend today's Hearing and the Hearing proceeded in their absence.

Based on the testimony of the Landlord's agent, I find both Tenants have been duly served with the Notice of Hearing documents for the purposes of an application under Section 55 for an Order of Possession. I further find that the Tenant JN has been duly served with the Notice of Hearing documents for the purposes of an application under Section 67 for a Monetary Order.

Based on the testimony of the Landlord's witness, I find that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving a copy of the Notice at the Tenants' residence with an adult who apparently resides with the Tenant, pursuant to Section 88(e) of the Act. The Notice states that the Tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenants did not pay the rental arrears, or apply to dispute the Notice to End Tenancy within five days. A 10 Day Notice to End Tenancy is effective 10 days after service. In this case, the effective end of Tenancy is April 12, 2009.

**Order of Possession** - Further to Section 46(5) of the Act, I find that the Tenants were conclusively presumed to have accepted that the tenancy ended on April 12, 2009, 10 days after service was affected. The Landlord is entitled to an immediate Order of Possession and I make that Order.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim against the Tenant JN and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit.

In the absence of any evidence to the contrary, I have calculated accrued interest on the security deposit from October 20, 2007 (the date the tenancy agreement was signed) to date.

The Residential Tenancy regulations allow for a charge of up to \$25.00 for late payment of rent, subject to this charge being disclosed and agreed to in the tenancy agreement. There is a clause in the tenancy agreement which stipulates an administrative charge of \$25.00 for late payment of rent. Therefore, the Landlord is entitled to this portion of its claim.

The Landlord has been successful in its Application and is entitled to recover the filing fee from the Tenants. The Landlord has established a Monetary Order, as follows:

Unpaid rent and late fees for April, 2009	\$775.00
Loss of rent for May, 2009	\$950.00
Filing fee	50.00
Sub total (Monetary Order in favour of the Landlord)	<b>\$1,775.00</b>
Less Security Deposit of \$412.50 plus interest of \$7.44	- 419.94
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,355.06</b>

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$1,355.06 against the Tenant JN. The monetary Order must be served on the female Tenant JN and is enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The Landlords' application for a monetary order against the Tenant ST is dismissed without leave to re-apply.

Dated: May 22, 2009.

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