



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding as well as to keep the Tenants' security deposit in partial payment of those amounts.

At the beginning of the hearing, the Landlords' agent confirmed that the spelling of one of the Landlords' names was incorrect and as a result, it was amended accordingly.

### Issues(s) to be Decided

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

### Background and Evidence

This month to month tenancy started on May 1, 2009. Rent is \$2,800.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$1,400.00 at the beginning of the tenancy.

The Landlords claim that the Tenants did not pay rent for December 2009 when it was due and as a result, on December 3, 2009, they posted a 10 Day Notice to End Tenancy for Unpaid Rent dated December 3, 2009 on the Tenants' door. The Tenants deny receiving the copy of the 10 Day Notice and say that they only received it in the Landlords' evidence package on January 11, 2010. The Tenants further claim that they received only the first page of the 10 day Notice.

The Tenants also claimed that they paid the Landlord, A.A., \$1,400.00 in cash on December 4, 2009 and \$2,800.00 in cash on January 3, 2010. The Tenants admit that they have arrears of rent of \$1,400.00 for January 2010. The Landlords said they had no first hand knowledge of these payments to A.A. but did not dispute that evidence.

## Analysis

Section 46(2) of the Act says that a Notice must comply with s. 52 of the Act. Section 52 of the Act says (in part) that a Notice when given by a Landlord must be in the approved form. The Tenants disputed that a 10 Day Notice to End Tenancy was posted to their door on December 3, 2009 as the Landlords alleged. The Tenants said they only received the 10 Day Notice on January 11, 2010 by registered mail. The Tenants also claim that they received only the first page of the 10 Day Notice.

The Landlords claimed that they did serve the Tenants on December 3, 2009 with both pages of the 10 Day Notice. However, the copy of the 10 Day Notice provided as evidence by the Landlords at the hearing contained only the first page. Page 2 of the Notice sets out the information to a Tenants about their right to dispute the Notice, the time limits for doing so and the implications for them if they do not dispute it or pay outstanding rent within the time limits. Consequently, an approved Notice must contain both pages of the 10 Day Notice.

The Landlords bear the onus of showing on a balance of probabilities that the Tenants were served with both pages of the 10 Day Notice as they alleged. The Tenants deny receiving both pages of the Notice and the copy of the 10 Day Notice provided by the Landlords at the hearing corroborates the Tenants' position as it too only contained one page. In the absence of any corroborating evidence to support the Landlords' position, I find that there is insufficient evidence to conclude that the Tenants received a 2 page Notice (or an approved 10 Day Notice). Consequently, the Landlords' application for an Order of Possession is dismissed.

I find that the Tenants have rent arrears of \$1,400.00 for January 2010. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in satisfaction of the rent arrears. The Landlords are entitled pursuant to s. 72 of the Act to recover their filing fee of \$50.00 and they will receive a monetary order for that amount. I find that the Landlords' application for a loss of rental income for February 2010 is premature and as a result, it is dismissed with leave to reapply.

At the end of the hearing, another agent for the Landlords (S.M.) joined the conference call and requested an opportunity to try to reach a settlement agreement to end the tenancy. However, a settlement was proposed by the other agent for the Landlord (S.A.) at the beginning of the hearing on the same terms proposed by S.M. but the Tenants did not wish to settle on those terms as it was their position that the Landlords were not entitled to end the tenancy. Consequently, the Landlords' agent's proposal to pursue the matter again after the hearing had ended was not permitted.



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## Conclusion

A monetary order in the amount of **\$50.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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 01, 2010.

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Dispute Resolution Officer