



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord and the tenants both participated in the conference call hearing, and gave evidence.

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

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The tenancy began on March 1, 2009 as a fixed term tenancy, which expires on February 28, 2010, and then reverts to a month-to-month tenancy. Rent in the amount of \$1,059.00 is payable in advance on the first day of each month. On February 10, 2009, the landlord collected a security deposit from the tenants in the amount of \$529.00. The tenants failed to pay rent in full for the month December, 2009 and on December 6, 2009 the landlord served the tenants with a notice to end tenancy for non-payment of rent.

The landlord testified that the tenants made a payment on December 15, 2009 of \$470.00 and were issued a receipt which was provided as evidence. That receipt shows that the \$470.00 payment received left a balance of \$613.00 as of December 15, 2009, which includes a \$25.00 late fee. The receipt also shows that the payment received is "for use and occupancy only." The landlord further testified that the tenants made 2 payments in January of \$400.00 and \$300.00, as well as 3 payments in February for \$760.00, \$300.00 and \$280.00. At this point the tenants owe \$741.00 in total for the months of December, January and February, which includes a \$25.00 late fee for each month. During the hearing, the landlord agreed to set aside the late fees, and reduce the amount owing to \$666.00. The tenants had a \$1.00 credit at the beginning of December, 2009.

The tenants' testimony did not dispute the amount owed, they simply have not had enough work to be able to afford the full amount each month, especially during the Olympics, and are relying on the good faith of the landlord to allow them to remain in the unit.

### **Analysis**

Based on the landlord's testimony I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

### **Conclusion**

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenants must be served with the Order of Possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord has established a claim for \$666.00 in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee. I order that the landlord retain the deposit and interest of \$529.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$187.00. This order may be filed in the Small Claims Court 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 26, 2010.

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Dispute Resolution Officer