



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent sent by registered mail on January 15, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlord's legal counsel advised that the tenants had never paid the security deposit as agreed, and that the tenants had vacated the rental unit in March 2010. Therefore, I find that the tenancy has ended and the application is amended accordingly to remove the requests for an Order of Possession and authorization to retain the security deposit.

Despite having been served with the Notice of Hearing served by registered mail sent on December 12, 2009, as attested by sworn affidavits, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

This matter was originally dealt with as a Direct Request Proceeding on March 3, 2010 on written submissions only but was adjourned to the present participatory hearing due to the fact that the rental agreement submitted in evidence had not been signed.

### **Issues to be Decided**

This application now requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and the recovery of the filing fee for this proceeding.

### **Background and Evidence**

This tenancy began on October 1, 2009, although the tenants actually took possession in mid September, receiving free rent for the balance of the month in exchange for work cleaning up the property. Rent was \$1,350, after a reduction from \$1,600, under an agreement that the tenants would care for the yard. The tenants agreed to pay a security deposit of \$675, but it was never paid.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had paid no rent to that time, despite having made repeated promises to do so. In the interim, the tenants remained in the rental unit until early to mid- March 2010 when they vacated without giving notice or providing a forwarding address.

Therefore, the landlord seeks a Monetary Order for the unpaid rent for the period from October 1, 2009 to March 31, 2010.

The landlord also submitted evidence that the tenants had not paid utilities as required. However, as that claim and supporting evidence were not included in materials sent to the tenants, I must dismiss that part of the claim with leave to reapply.

## Analysis

Section 26 of the *Act* provides that: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement...”.

Section 67 of the *Act* states that, “...if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.”

I accept the evidence of the landlord that the tenants paid no rent from the time they moved in to the rental unit until the time they moved out and that, including recovery of the filing fee, they are responsible for the landlord's losses calculated as follows:

October 2009 rent	\$1,350.00
November 2009 rent	1,350.00
December 2009 rent	1,350.00
January 2010 rent	1,350.00
February 2010 rent	1,350.00
March 2010 rent	1,350.00
Filing fee	100.00
<b>TOTAL</b>	<b>\$8,200.00</b>

The landlord also requested guidance on the disposition of two love-seats and a sofa with missing cushions left behind by the tenants. The landlord and a witness stated that the items had no apparent monetary value.

That being the case, the landlord may dispose of these items under section 25(2) of the *Regulations* as follows:

2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

In other words, the landlord may dispose of the items and is relieved of the obligations of storage and notice.

## **Conclusion**

The landlord's copy of this decision is accompanied by a Monetary Order for \$8,200.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

April 16, 2010