



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, & FF

### Introduction

This hearing dealt with the landlord's application seeking an Order of Possession and a monetary claim due to the tenants' failure to pay rent.

The landlord provided evidence that the tenants were served with notice of this proceeding by Fedex on November 10, 2010 and the landlord provided tracking information which confirmed that the package had been delivered on November 16, 2010. Although delivery by Fedex did not include a signature, the tenants were required to authorize the delivery method of the package.

Pursuant to section 71(c) of the *Act*, I find that even though the landlord did not serve the tenants as required by section 89 of the *Act*, I accept that service of the documents through Fedex is sufficient means for the purposes of the *Act*. I deem the tenants as having been served with the documents and I proceeded with the hearing in the tenants' absence.

### Issues(s) to be Decided

Have the tenants breached the tenancy agreement, *Act* or regulations entitling the landlord to an Order of Possession and a monetary claim?

### Background and Evidence

This tenancy began on July 1, 2010 for the monthly rent of \$1,375.00 and a security deposit of \$687.50. On November 3, 2010 the tenants were served a 10 day Notice to End Tenancy Due to Unpaid Rent. The tenants had an outstanding sum owed from October for \$100.00 and failed to pay the rent owed for November.

The landlord stated that the tenants sent an e-mail on November 12, 2010 indicating that they have vacated the rental unit and have left the keys behind. The landlord does not have a forwarding address for the tenants. The landlord stated that the rental unit is

in deplorable, unclean state and she has been unsuccessful in finding new tenants because the condition of the rental unit. The landlord stated that prospective tenants walk away because of the condition. The landlord also stated that she is unable to rent the unit because the tenants have abandoned property, including two engines in the garage which she has been unable to remove and which are leaking oil.

The landlord seeks compensation due to unpaid rent and loss of rental income for the sum of **\$2,900.00** which includes recovery of the \$50.00 filing fee paid for this application.

### Analysis

Based on the evidence provided by the landlord and in the absence of evidence to the contrary, I find that the tenants have failed to pay the rent owed of \$1,475.00 for outstanding rent from October and November 2010 as required by the tenancy agreement.

I also accept the evidence of the landlord that the tenants abandoned the rental unit on approximately November 12, 2010 and left behind personal property including two engines in the garage. I also accept the landlord's testimony that the engines are leaking oil.

The landlord claims the tenants left the rental unit in an unclean condition, contrary to their obligations under section 32 of the *Act*, and as a result the landlord has incurred an additional month in lost rental revenue for December 2010 for the sum of \$1,375.00. However, this was not part of the landlord's original claim and it is premature to make a finding on this matter in the absence of evidence demonstrating that the landlord took reasonable steps to mitigate potential losses. I remind the landlord that pursuant to section 7 of the *Act* all attempts to mitigate or minimize the loss should be taken.

In addition, the landlord is seeking costs related to alleged damage to the garage door of the rental unit. Claims for damages are premature to this application because the tenancy was still intact when the application was made. The landlord is at liberty to file a new application for Dispute Resolution to pursue these matters.

I do find it necessary to make some additional findings related to the tenants' abandonment of the engines on the landlord's property. I am satisfied that the tenants provided the landlord with oral and/or written notice, through the e-mail of November 12, 2010, that they were vacating. Pursuant to section 24(1) & (2) (a) & (b) of the

regulations I find that the landlord can consider the engines as property the tenants have abandoned. I also find, and Order, pursuant to regulation 25(2)(c) that the landlord may dispose of the engines in a commercially reasonable manner because the engines are property which is unsanitary and unsafe in their present form and condition.

### Conclusion

I grant the landlord's application and find that a monetary claim for the sum of **\$1,525.00** has been established. This sum is comprised of the outstanding rent from October 2010 for \$100.00, the outstanding rent for November 2010 for \$1,375.00 plus the recovery of the \$50.00 filing fee the landlord paid for this application. This Order must be served upon the tenants. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I have also Order that the landlord may dispose of the engines abandoned by the tenants in a commercially reasonable manner pursuant to regulation 25(c).

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: December 02, 2010.

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Dispute Resolution Officer