



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit.

The Landlord provided a copy of an undated tenancy agreement which names only J.A.P. as a tenant. The Landlord claims that on October 15, 2010, this tenant's spouse, M.C., contacted him to advise him that J.A.P. had moved out and that she would be taking over the tenancy, however J.A.P. made a rent payment on December 1, 2010. The Landlords said the tenants disconnected the telephone numbers they gave him at the beginning of the tenancy and refused to provide him with a new one and as a result, the Landlord's agent said she has been unable to confirm if J.A.P. has moved out or not. In the circumstances, I find that both J.A.P. and M.C. are properly named as parties in this proceeding.

The Landlord's agent said she served the Tenants with the Application and Notice of Hearing (the "hearing packages") by registered mail on February 11, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issue(s) to be Decided

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

### Background and Evidence

This month-to-month tenancy started on June 1, 2010. Rent is \$1,250.00 per month payable in advance on the 1<sup>st</sup> day of each month plus 2/3 of the utilities for the rental property. The Tenants paid a security deposit of \$625.00 at the beginning of the tenancy.

The Landlord's agent said the Tenants' rent cheque for January 2011 was returned for non-sufficient funds so on January 24, 2010 the Tenants paid \$1,200.00 and said they would pay the balance of \$50.00 on February 1, 2010 together with rent for that month. The Landlord said the Tenants did not pay the balance of rent for January 2011 or rent for February 2011. As a result, on February 1, 2011 the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 1, 2011 by posting it to the rental unit door. The Landlord's agent said the Tenants have not paid the outstanding rent for January 2011 or rent for February 2011.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it was posted, or on February 4, 2011. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than February 9, 2011.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears for January 2011 of \$50.00, rent arrears for February 1 – 22, 2011 in the amount of \$982.14, a loss of rental income for February 23 – 28, 2011 in the amount of \$267.86 as well as the \$50.00 filing fee for this proceeding. At the end of the hearing, the Landlord withdrew his application to keep the Tenants' security deposit in partial satisfaction of the outstanding rent.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$1,350.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. 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 22, 2011.

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Residential Tenancy Branch