



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent; and to apply the security deposit towards its monetary award.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that he mailed the Notice of Hearing documents, together with copies of his evidence, to the Tenants by registered mail on February 15, 2011, to the Tenants' address. The Landlord provided the receipt and tracking information with respect to the documents, which indicates that an attempted delivery was made; a notice card was left indicating where the documents could be picked up; and the Tenants had not picked up the registered mail documents by February 21, 2011. The tracking information also indicates that a final notice was sent to the Tenants on February 21, 2011, indicating the documents would be returned to sender if not collected within 10 days.

Based on the testimony and documentary evidence provided by the Landlord, I accept that the Tenants were served with the Notice of Hearing Package and Landlord's evidence pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents whether or not the recipient chooses to accept delivery.

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

(1) Is the Landlord entitled to an Order of Possession?

- (2) Is the Landlord entitled to a monetary order for unpaid rent for December, 2010, and January 2011, and loss of rent for February, 2011?

### **Background and Evidence**

The Landlord gave the following testimony and documentary evidence:

- The rental unit is the basement suite of a house. Monthly rent is \$300.00, due on the 23<sup>rd</sup> day of each month. No security deposit was paid at the beginning of the tenancy
- The Tenants live in the main suite of the house. They entered into a written tenancy agreement with the Landlord on November 11, 2009. At this time, the Landlord was occupying the basement suite. The Landlord moved out of the basement suite in December, 2010.
- On December 23, 2010, the Tenants and the Landlord entered into a verbal tenancy agreement for the basement suite, so that the Tenants' brother could move into the basement suite. The Tenants paid rent for the basement suite directly to the Landlord.
- The Tenants did not pay rent when it was due in December, 2010, so the Landlord issued a Notice to End Tenancy on January 7, 2011. He served the Tenants' brother with the Notice, in person at the basement suite, on January 7, 2011 at 2:00 p.m. He also served the Tenant SG with the Notice, in person, on February 1, 2011, at 6:15 p.m., at the main suite of the house.
- The Tenants have not paid any rent for the basement suite since November 29, 2010.

### **Analysis**

I accept the Landlord's agent's testimony that the Tenants were duly served with the Notice to End Tenancy on February 1, 2011, pursuant to the provisions of Section 88(a)

of the Act. The Tenants did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, the effective end to the tenancy was February 11, 2011.

Therefore, the Landlord is entitled to an Order of Possession and I make that order **effective 2 days after service of the Order upon the Tenants.**

Based on the undisputed testimony of the Landlord and the absence of any evidence to the contrary from the Tenants, the Landlord has established his claim, as follows:

Unpaid rent December 23, 2010	\$300.00
Unpaid rent January 23, 2011	\$300.00
Loss of rent (due February 23, 2011)	<u>\$300.00</u>
TOTAL:	\$900.00

The Landlord has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

### **Conclusion**

I hereby provide the Landlord an Order of Possession **effective two days from service of the Order upon the Tenants.** This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$950.00** against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

Dated: February 28, 2011.

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