



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 15, 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 even if they refuse to pick up the mail. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package(s) 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 compensation for a loss of rental income?
4. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This month-to-month tenancy started on February 25, 2011. Rent is \$900.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$450.00 at the beginning of the tenancy.

The Landlord said the Tenants did not pay rent for May 2011 when it was due and as a result, on May 2, 2011, the Landlord served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2011. The Landlord said the Tenants have not paid the overdue rent for May and have not yet paid rent for June 2011. The Landlord said one of the Tenants told her on May 18, 2011 that they intended to move out by May 22, 2011 and would participate in a move out inspection at that time however she said they have not removed many of their belongings and have not yet returned the keys or advised her if they have vacated.

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.

I find that the Landlord served the Tenants in person on May 2, 2011 with the 10 Day Notice dated May 2, 2011. Consequently, the Tenants would have had to pay the overdue rent stated on the Notice or apply to dispute that amount no later than May 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 in the amount of \$900.00, a loss of rental income for the period, June 1 – 15, 2011, in the amount of \$450.00 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit plus any accrued interest in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

|                         |                 |
|-------------------------|-----------------|
| Rent arrears May 2011:  | \$900.00        |
| Loss of rental income:  | \$450.00        |
| Filing fee:             | <u>\$50.00</u>  |
| Subtotal:               | \$1,400.00      |
| Less: Security Deposit: | (\$450.00)      |
| Accrued Interest:       | <u>(\$0.00)</u> |
| Balance Owing:          | \$950.00        |

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$950.00** 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: June 02, 2011.

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Residential Tenancy Branch