



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application: CNR

Landlords' application: OPR; MNR

### **Introduction**

This Hearing was scheduled to consider cross applications. The Tenants are applying to cancel a Notice to End Tenancy for Unpaid Rent. The Landlords' application is for an Order of Possession; and a Monetary Order for unpaid rent and loss of revenue.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

- Should the Notice to End Tenancy issued May 15, 2011 be cancelled or upheld?
- Are the Landlords entitled to a Monetary Order for unpaid rent for the month of May, 2011 and loss of revenue for the month of June, 2011?

### **Background and Evidence**

This tenancy started on March 1, 2011. A copy of the tenancy agreement was provided in evidence. Monthly rent is \$725.00, due on the first day of each month. The Tenants were required to pay a security deposit in the amount of \$350.00 at the beginning of the tenancy.

The Landlord testified that the Tenants made the following payments throughout the course of the tenancy:

Date	Amount due/description	Amount paid	Balance
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			outstanding
March 4/11		Cheque \$625.00	0
March 5/11	\$625.00 cheque returned NSF		\$625.00
March 5/11		Cash \$500.00	\$125.00
March 5/11	\$263.00 credited to Tenants for paint, \$125.00 towards unpaid rent, balance of \$138.00 towards unpaid security deposit (Landlord now holds \$138.00 in security deposit from Tenants)		0
April 1/11	\$725.00 rent	Cash \$725.00	0
May 1/11	\$725.00 rent	0	\$725.00
June 1/11	\$725.00 rent	0	\$1,450.00

The Tenant agreed that no rent was paid for May or June, 2011. She stated that the Landlord had agreed that they could make improvements to the property in lieu of paying rent for May, 2011. The Tenant stated that she believed they didn't have to pay rent for June, 2011, until the outcome of this Hearing.

### **Analysis**

The Act is very clear with respect to payment of rent. Section 26(1) of the Act states:

**26** (1) 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are limited situations when a Tenant can withhold rent, which include:

1. When the Tenant receives an order of the Residential Tenancy Branch that the Tenant may withhold rent;
2. When the Landlord agrees in writing that the Tenant may do so;

3. When the Landlord illegally increases the rent; and
4. When the Landlord does not reimburse the Tenant for **emergency** repairs **after receiving the written account and receipts** for those emergency repairs.

The Tenant agreed that no rent was paid for the months of May or June, 2011. There was no written agreement with the Landlords that the Tenants could deduct the cost of improvements or repairs from rent due. There was no evidence that the Tenants effected emergency repairs, or any evidence that written account, invoices or receipts were provided to the Landlord for emergency repairs.

Based on the testimony of both parties, I accept that the Landlords served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenant's door on May 15, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be provided three days after posting the documents. Therefore, pursuant to Section 46(1) of the Act, the effective date of the Notice was May 28, 2011. The Tenants are overholding and therefore the Landlords are entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

Based on the testimony of both parties, the Landlord's agent has established a monetary claim for unpaid rent for May and loss of revenue for June, 2011, in the total amount of \$1,450.00.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary claim.

The Landlords have established a monetary award, calculated as follows:

Unpaid rent and loss of rent	\$1,450.00
<b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF</b>	<b>\$1,312.00</b>

**Conclusion**

I hereby provide the Landlords an Order of Possession effective 2 days after service of the Order upon the Tenants. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlords a Monetary Order in the amount of \$1,312.00 for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 17, 2011.

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Residential Tenancy Branch