



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNSD

### **Introduction**

This is the Landlords' application for an Order of Possession; a Monetary Order for unpaid rent; and to retain the security deposit in partial satisfaction of their monetary claim.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served both Tenants with Notice of Hearing documents, by handing the documents to the Tenants on April 9, 2011, at the rental unit.

### **Issues to be Decided**

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for unpaid rent?

### **Background and Evidence**

There was a Hearing on April 6, 2011, wherein the Tenants were disputing a rent increase from \$810.00 to \$840.00 per month. The Dispute Resolution Officer found that the previous rent increase from \$780.00 to \$810.00 was higher than allowed under the provisions of the Act and regulations, and determined that monthly rent is \$804.96. The Dispute Resolution Officer also allowed the Tenants to deduct the cost of the \$50.00 filing fee for their application from future rent due to the Landlord.

The Landlord testified that he personally served the Tenants with the 10 day Notice to End Tenancy (the “Notice”) on April 2, 2011, at the rental unit. The Notice indicates that the Tenant owes rent in the amount of \$810.00 that was due on April 1, 2011.

The Landlord testified that the Tenant gave the Landlord \$810.00 on April 10, 2011, and the Landlord accepted the money for “use and occupancy only”. The Landlord testified that the Tenant paid the Landlord \$754.69 on May 1, 2011, and that the Landlord accepted the money for “use and occupancy only”.

The Tenant testified that she didn’t pay rent on April 1, 2011, because she was waiting for the outcome of the April 6<sup>th</sup> Hearing. She stated that the Landlord had given her receipts for “use and occupancy only”.

### **Analysis**

Section 26(1) of the Act states:

#### **Rules about payment and non-payment of rent**

- 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.

In this case, the Tenants did not have any right under the Act to withhold any of their rent on April 1, 2011.

I accept that the Landlord served the Tenants with the Notice to End Tenancy on April 2, 2011. The Tenants did not pay the rent, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on April 12, 2011.

The Landlord provided the Tenants with a license to occupy the rental unit until May 31, 2011, and therefore, I provide the Landlord with an Order of Possession **effective 1:00 p.m., May 31, 2011.**

The Landlord testified that the Tenant did not pay the full amount (\$810.00) required for the month of May, 2011. However, the Decision of April 6, 2011 makes it clear that rent was determined to be 804.96. The Dispute Resolution Officer also directed the Tenants to deduct the cost of their filing fee from future rent. Therefore I find that the Tenants paid the full amount required for the month of May, 2011. The Tenants also paid the full amount required for the month of April, 2011, and therefore the Landlords' application for a Monetary Order is dismissed.

The security deposit being held by the Landlords must be administered in accordance with the provisions of the Act and remains available on application by either party.

### **Conclusion**

I hereby grant the Landlord an Orders of Possession effective **1:00 p.m., May 31, 2011.** 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.

The Landlords' application for a Monetary Order is dismissed.

The security deposit being held by the Landlord must be administered in accordance with the provisions of the Act and remains available on application by either party.

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: May 04, 2011.

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Residential Tenancy Branch