



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

At the hearing the landlord asked to amend his claim to include a claim for loss of income for the months of July and August. I find that the tenants should reasonably have known that the landlord could not re-rent the unit while they were living therein and I allow the amendment.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

### Background and Evidence

The facts were not in dispute. The tenancy began in or about 2001 at which time a \$350.00 security deposit was paid. The parties agreed that August 5, 2001 should be the date used to determine interest payable on the security deposit.

In October 2010 the tenants received a notice of rent increase raising their rent from \$785.00 to \$810.00 per month, effective February 1, 2011. The tenants failed to pay their rent in the months of April – June inclusive and on June 3, 2011 the landlord served the tenants with a 10 day notice to end tenancy.

The tenants made some rental payments, but as of the date of the hearing still owed \$610.00 for the month of May and had not paid any rent for June – August inclusive.

The landlord seeks to recover rental arrears, loss of income and his filing fee as well as an order of possession for the rental unit.

### Analysis

I find that the tenants were in arrears at the time they were served with the notice to end tenancy on June 3, 2011 and that they did not pay all of the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the

notice. They are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the tenants paid just \$200.00 in rent for May and paid no rent for the months of June – August inclusive. The landlord purported to raise their rent effective February 1, 2011, but did not stay within the confines established by the Residential Tenancy Regulations. The Regulations permitted the landlord to raise the rent by no more than 2.3%, which would have been an increase of \$18.06 per month. Instead, the landlords imposed a \$25.00 increase. I find that the rent increase was illegal and therefore not enforceable. I find that the rent therefore has remained at \$785.00 per month and that the tenants overpaid their rent by \$25.00 in the months of February, March and April. The tenants are therefore credited with \$75.00 for those months.

I find that the tenants failed to pay \$585.00 of their rent in the month of May, \$785.00 in the month of June. I further find that the landlord suffered a \$785.00 loss of income for the month of July. As it is still early in the month of August, I find that it is possible the landlord could install a new tenant in the unit by August 15. I therefore find that the landlord has established a loss of income for half the month of August in the amount of \$392.50. The landlord is also entitled to recover the \$50.00 cost of filing this application. I find that the landlord is entitled to recover his losses as follows:

May rent	\$ 585.00
June rent	\$ 785.00
July loss of income	\$ 785.00
August loss of income	\$ 392.50
Filing fee	\$ 50.00
<b>Sub-total:</b>	<b>\$2,597.50</b>
Credited rent overpayment	- \$75 .00
<b>Total:</b>	<b>\$2,522.50</b>

I order that the landlord retain the \$350.00 security deposit and the \$16.84 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,155.66. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$2,155.66. The landlord may retain the security deposit.

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: August 05, 2011

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Residential Tenancy Branch