



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 5, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(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 unpaid rent and if so how much?

### Background and Evidence

This tenancy started on May 25, 2011 as a month to month tenancy. Rent is \$850.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 on May 25, 2011.

The Landlord said that the Tenant did not pay \$850.00 of rent for July, 2011 when it was due and as a result, on July 4, 2011 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2011, to the Tenants. The Landlord said the Tenants have made payments in August, 2011 for the July, 2011 rent in the amount of \$850.00 and the Landlord said he gave the Tenants receipts which specified the payments were for use and occupancy only. The Landlord did not reinstate the tenancy by accepting the payments in August, 2011. The Landlord continued to say the Tenants have unpaid rent for August, 2011 in the amount of \$850.00 as well.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord and the Tenants have signed a Mutual Agreement to End Tenancy dated August 2, 2011 with an effective vacancy date of September 1, 2011. The Landlord said he is requesting an Order of Possession with an effective vacancy date of

September 1, 2011 to coincide with the Mutual Agreement to End Tenancy that the parties have signed.

The Landlord also requested to recover the \$50.00 filing fee for this proceeding.

### 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 pay the overdue rent or apply for dispute resolution. If the 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 ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy when it was personally delivered to the Tenants, or on July 4, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 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 on September 1, 2011.

I also find that the Landlord is entitled to recover unpaid rent for August, 2011 in the amount of \$850.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 850.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$ 900.00
 Balance Owing		 \$ 900.00

Conclusion

An Order of Possession effective September 1, 2011 and a Monetary Order in the amount of \$900.00 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*.

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Residential Tenancy Branch