



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent and for breach of an agreement with the landlord; and a Monetary Order for unpaid rent.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent September 14<sup>th</sup>, 2011, and provided a Canada Post tracking number. The tenants did not participate and the hearing proceeded in the tenants' absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of the upper level of a single detached home. Pursuant to a written agreement, the month to month tenancy started on June 22<sup>nd</sup>, 2011. The rent is \$1200.00 per month and the tenants paid a security deposit of \$600.00. The parties

signed a mutual agreement to end the tenancy on or before July 31<sup>st</sup>, 2011, and for the landlord to refund \$400.00 from the security deposit to allow the tenants to use that amount towards the security deposit at their new place of residence. The landlord holds a balance of \$200.00 as security deposit.

The landlord testified that despite the agreement to end the tenancy, the tenants have not moved and have not paid rent for August and September. The landlord stated that the tenants are threatening him when he tries to collect the rent, and that he has had to call the police on three occasions.

The landlord applied to recover \$2400.00 of unpaid rent for August and September 2011.

### Analysis

I accept the landlord's undisputed testimony that he served the tenants with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenants knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. On that basis alone the landlord is entitled to an Order of Possession.

Based on the evidence I accept that the tenants have not paid rent and that the landlord is entitled to recover the loss of rental income as claimed.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the landlord to retain the tenants' \$200.00 security deposit for a balance owing of \$2200.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$2200.00. This Order may be registered in the Small Claims Court 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: September 26, 2011.

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Residential Tenancy Branch