



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**CNR, OPR, MNR, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a Notice issued ending tenancy for unpaid rent.

The landlord provided affirmed testimony that on September 30, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to each tenant. The landlord supplied a copy of the Canada Post web site information that indicated the female tenant signed accepting both mail packages on October 4, 2011.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing. I find that the male tenant has been sufficiently served with Notice of this hearing, via an adult with whom he resides.

The landlord personally served the tenants with a copy of the evidence package.

The landlord stated he had attempted to obtain Orders via the Direct Request Proceeding process; however, as a result of the tenant's application he was required to attend this participatory hearing. The landlord was not served with Notice of the tenant's hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The landlord provided a copy of the tenancy agreement; however, the 2<sup>nd</sup> page was missing. The landlord testified that the tenants moved in to the unit on June 24, 2011; the rent of \$1,400.00 per month was due on the 26<sup>th</sup> of each month. A deposit in the sum of \$700.00 was paid at the start of the tenancy.

A copy of an August 26, 2011, rent cheque was submitted as evidence, which was stamped by the bank as dishonoured. The cheque had included costs for keys owed by the tenant.

The landlord stated that on September 24, 2011, at 3:15 p.m., with his cousin present as a witness, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 4, 2011, was personally served to the female tenant, at the rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,400.00 August, 2011, rent within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord submitted copies of text messages from the tenants, sent on September 23, 2011, indicating that they would not be able to pay rent, as they were not financially stable; the tenants told the landlord to bring them the eviction notice.

On September 27, 2011, the tenants applied to cancel the Notice and were to attend this hearing in support of their application.

The landlord has not received rent owed for August, September and has claimed October, 2011, rent, as it is due today.

### Analysis

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on September

24, 2011, pursuant to section 46 of the Act. The male tenant has been served the Notice via an adult with whom he resides.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants applied to dispute the Notice, but failed to attend this hearing in support of their application; therefore, I find that their application is dismissed.

No evidence was supplied by the tenants that demonstrated rent had been paid as required by the Act.

Therefore, in the absence of the tenants at this hearing, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,800.00 for August and September, 2011, and that the landlord is entitled to compensation in that amount.

The claim for unpaid rent or loss of October rent revenue is dismissed with leave to reapply; as it is not due until the end of today.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$700.00, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$2,850.00, which is comprised of \$2,800.00 in unpaid August and September, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$700.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,150.00. In the event that the tenants do not comply with this Order, it may be served

on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim for October, 2011, rent is dismissed with leave to reapply.

The tenant's application is dismissed.

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: October 26, 2011.

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Residential Tenancy Branch