# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes        OPR, MNR, MNDC, FF

## Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fee associated with this application.

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 on September 27th, 2011, and provided a Canada Post tracking number. The tenants did not participate and the hearing proceeded in the tenant's 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 recover the filing fee?

## Background and Evidence

The rental unit consists of an apartment in a multi-unit complex.

Pursuant to a written agreement, the tenancy started on December 1st, 2010; the rent is $825.00 per month, payable on the first of each month; the tenants paid a security deposit of $412.50; and there is an additional monthly fee of $20.00 for parking.

The landlord testified that he served the tenants a 10 Day Notice to End Tenancy for unpaid rent for September 2011. In his documentary evidence, the landlord provided a copy of the notice with proof of service on the tenants made on September 2nd, 2011, by posting the notice on the tenants' door. The landlord stated that at the end of September 2011, the tenants gave him notice that they would move by October 31st, 2011, and that they have since paid a portion of the rent arrears.

The landlord's monetary claim for unpaid rent by the date of this hearing is amended as follows:

- September 2011 late rent fee: $  20.00
- September 2011 parking fee: $  20.00
- October 2011 late rent fee:    $  20.00
- Sub-total:                     $  60.00

The landlord requested an Order of Possession, should the tenants fail to vacate the unit by October 31st, 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 tenants in this matter have not filed an application for dispute resolution. On that basis alone the landlord is entitled to an Order of Possession.

I also accept the landlord's documentary and oral evidence concerning the unpaid parking and late fees, and find that the landlord is entitled to recover this outstanding debt as claimed at the hearing.

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.

The landlord established a claim of $60.00. Since the landlord was successful, I award the landlord recovery of the $50.00 filing fee for a claim totalling $110.00. Pursuant to Section 72(2) of the Act, I authorize the landlord to retain $110.00 from the tenants' $412.50 security deposit. Accordingly, that deposit is now adjusted to $302.50.

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 24, 2011.

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Residential Tenancy Branch