



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, and FF

This application was brought by the landlord on November 25, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on October 26, 2011. The landlord also sought a Monetary Order for the unpaid rent and late fees, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on November 28, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and Monetary Order for the unpaid rent, late fees and filing fee and authorization to retain the security deposit in set off.

### Background and Evidence

This tenancy began on April 24, 2011 under a fixed term agreement to May 31, 2012. Rent is \$2,240 per month and the landlord holds a security deposit of \$1,120 paid on April 13, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 26, 2011 had been served after the tenants had failed to pay the rent due on October 1, 2011 and had a rent shortfall of \$340.

That was satisfied when the tenants paid a payment of \$600, but it was beyond the five days within which payment would have extinguished the Notice to End Tenancy.

In the interim, the tenants have not paid the rent for November, but began the month with a \$260 credit resulting in a rent shortfall for the month of \$1,980.

Similarly, at the time of the hearing, the tenants had not paid the \$2,240 rent due on December 1, 2011.

The landlord also seeks \$40 late fees for each of the three months in question as per the rental agreement. However, I reduce this claim to \$25 per month to comply with the maximum amount permitted by regulation.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was November 8, 2011 taking into account the three days deemed service of a notice served by posting.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for November and December 2011 and late fees for October, November and December..

In addition, I find that the landlord is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

The monetary award is calculated as follows:

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Rent shortfall for November 2011	\$1,980.00
Late fees for three months @ \$25.	75.00
Filing fee	<u>50.00</u>
Sub total	\$4,345.00
Less retained security deposit (No interest due)	<u>- 1,120.00</u>
<b>TOTAL</b>	<b>\$3,225.00</b>

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$3,225.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord is at liberty to make application for any further losses or damage as may be ascertained at the conclusion of the tenancy.

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: December 12, 2011.

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Residential Tenancy Branch