



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF  
                                 CNR

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a month to month tenancy that began on September 1, 2009 and the Tenants were allowed to occupy the unit as of August 27, 2009. Rent is payable on the first of each month and was reduced from \$885.00 to \$825.00 per month approximately 1 ½ years ago. The Tenants paid \$442.50 on August 24, 2009 as the security deposit.

At the outset of the hearing the Tenant affirmed she had “heard” that something was taped to her door however she did not receive it and therefore has not received the Landlord’s application for dispute resolution. She later confirmed receiving a notice from Canada Post to pick up registered mail however she has not picked the package up.

The Landlords affirmed they suspected there would be problems with this Tenant alleging she did not receive the documents so on December 15, 2011, they taped one copy to her door, sent another copy to her address via registered mail and provided the tracking information in their documentary evidence, and personally served the other Tenant at her current residence in the hospital care facility. The 10 Day Notice was personally served on December 5, 2011, by the male Landlord to the Tenant who appeared at today’s hearing.

The Tenant stated she is vacating the rental unit as of today, December 20, 2011 and wished to withdraw her application to cancel the Notice. She requested that the move out be conducted at 3:00 p.m. or earlier if she was able to get things moved prior to that.

The Landlords agreed to meet the Tenant at 3:00 p.m. today for the move out inspection. They stated they were concerned the Tenant was not going to clean the rental unit as they received a text message to say she would not clean because she was being evicted. After a brief discussion they requested not to offset the security deposit against the unpaid rent so they could hold onto the deposit until after the inspection to determine if there is any damage or loss as a result of the Tenant vacating the property today. They are of the opinion that the Tenant will not vacate as stated here today so they wished to have the Order of Possession effective today and to be faxed to the Service BC office as soon as possible.

The Tenant advised she did not have a forwarding address at this time and requested that the decision be sent to her mother, the co-tenant, at the hospital address she provided in her testimony.

### Analysis

I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and the Tenants failed to pay the rent within 5 days after receiving this notice. Accordingly, I approve the Landlord’s request for an Order of Possession effective upon two days after service.

The Landlords claim for the total unpaid rent of \$825.00 owed for December 2011; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I award the Landlord **\$825.00** for unpaid rent.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

The Tenant's application was withdrawn; therefore no further action is required and the file is hereby closed.

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$875.00 (\$825.00 + 50.00)**. This Order is legally binding and must be served upon the Tenants.

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 20, 2011.

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Residential Tenancy Branch