



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 16, 2011. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to end the tenancy?

### Background and Evidence

This tenancy started on April 6, 2010, as a month to month tenancy. Rent is \$1,300.00 per month payable in advance of the 1<sup>st</sup> day of each month. A security deposit of \$450.00 was paid on April 6, 2010 and a pet deposit of \$300.00 was paid in early April, 2010. The Landlord said the Tenants are living in the rental unit and she requested an Order of Possession with an effective vacancy date for as soon as possible.

The Landlord said that the Tenants did not pay \$11,700.00 of rent from April, 2011 to December, 2011, when it was due and as a result, on December 9, 2011 the Landlords’ agent personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 9, 2011 to the Tenants. The Tenant confirmed that he received the Notice to End Tenancy for unpaid rent. The Landlord continued to say that the Tenant also has unpaid rent for January, 2012 of \$1,300.00. The Landlord said their total claim is for \$13,000.00 of unpaid rent for the time period of April, 2011 to January, 2012. The Landlord continued to say there was an accounting error and they did not discover the rent was not being paid until December, 2011. Following the discovery that the rent was unpaid the Landlord contacted the Tenants, but no payments have been made since they spoke to the Tenants.

The Tenant said he has been working out of town and he trusted a friend to forward his rent payments to the Landlord. The Tenant continued to say it appears that his friend did not give the money he sent to the Landlord. The Tenant said he agrees with what the Landlord has said and he knows he owes \$13,000.00 in unpaid rent.

## Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the same day that it is personally delivered, or on December 9, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 14, 2011.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect two days after the Order is served on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for the time period from April, 2011 to January, 2012, which includes 10 months of unpaid rent at \$1,300.00 per month for a total of \$13,000.00.

As the Landlord has been successful in this matter I order the Landlord to recover the filing fee of \$100.00 from the Tenant. A monetary order has been issued to the Landlord for \$13,100.00 which represents the unpaid rent and the filing fee.



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## Conclusion

An Order of Possession effective two days after service and a Monetary Order in the amount of \$13,100.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Dispute Resolution Officer