



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application for dispute resolution by the landlords for an order of possession, a monetary order and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 9, 2012, neither tenant appeared. The landlord testified that each tenant was served via registered mail to the address at which the tenants reside, provided the tracking number for each registered mail envelope and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenants' absence.

The landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

### **Preliminary Issue:**

The landlord stated that the tenants had vacated the rental unit the night prior to the hearing and presented that as a result, he no longer required an order of possession. I therefore have excluded that portion of the landlords' application and proceeded on their request for a monetary order.

Further, the female tenant's mother appeared and announced she was there to observe the proceedings and acknowledged the female tenant would not be in attendance. The landlord stated he had no objection to the female tenant's mother staying in the conference.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order, authority to retain the tenant's security deposit and to recover the filing fee?

### Background and Evidence

The landlord testified that this month to month tenancy began on January 1, 2012, monthly rent is \$700.00, and a security deposit of \$350.00 was paid by the tenants at the beginning of the tenancy, on or about January 1, 2012.

The landlord gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on February 2, 2012, via personal delivery to the female tenant at the rental unit. The Notice stated the amount of unpaid rent was \$700.00.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

I have no evidence before me that the tenants applied to dispute the Notice and the landlords submitted that that the tenants did not make any rent payments since issuance of the Notice, currently owing unpaid rent of \$700.00 through the date of the hearing.

As to the balance of the landlords' monetary claim, that being \$150.00, the landlord stated that this amount was an estimate of costs for an improper repair of the window by the tenants.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlords have established a monetary claim for unpaid rent in the amount of \$700.00.

As to the landlords' claim for \$150.00, I find that the claim was made during the tenancy, when the tenants still had the opportunity to complete the repairs and/or leave the rental unit in the condition required under the Act. Additionally, I did not hear from the landlords if the end of the tenancy issues regarding the state of the rental unit had

been addressed. Due to this, I find the landlords' claim for improper repair to be premature and I **dismiss** their monetary claim for **\$150.00**, with leave to reapply.

I find that the landlords have established a total monetary claim of **\$750.00** comprised of outstanding rent of **\$700.00** and the **\$50.00** filing fee paid by the landlords for this application.

At the landlords' request, I allow the landlords to retain the tenants' security deposit of **\$350.00** in partial satisfaction of the monetary claim and I grant the landlords a monetary order under authority of section 67 of the Act for the balance due of **\$400.00**.

I am enclosing a monetary order for **\$400.00** with the landlords' Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenants fail to comply with this monetary order.

#### Conclusion

The landlords may keep the tenants' security deposit in partial satisfaction of their monetary claim and are granted a monetary order for **\$400.00**.

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: February 29, 2012.

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Residential Tenancy Branch