



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order. The Application was original adjudicated through the Direct Request process and a participatory hearing was not convened. The Dispute Resolution Officer ordered that a participatory hearing be convened.

The hearing was conducted via teleconference and was attended by the landlord's agents only. The tenants did not attend.

The landlord provided documentary evidence that each of the tenants was served with the notice of hearing documents and the Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 24, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the landlord, I find that all of the tenants have been sufficiently served with the documents pursuant to the *Act*.

As the original Application was for a Direct Request, the landlord was not allowed to claim against the security deposit for any debt owed in relation to unpaid rent or to recover the filing fee from the tenants. As the Application has been adjourned to a participatory hearing I allow an amendment to the Application to seek the security deposit and the filing fee.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2011 for a 1 year fixed term tenancy beginning on July 1, 2011 for the monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month and \$200.00 of a security deposit of \$500.00 paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 16, 2011 with an effective vacancy date of December 26, 2011 due to \$4,300.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of September, October, November, December 2011 and January and February 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on December 16, 2011, 2011 at 11:00 a.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on December 16, 2011 and the effective date of the notice was December 26, 2011. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$6,050.00** comprised of \$6,000.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$200.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,850.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 07, 2012.

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Residential Tenancy Branch