



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Landlord:	OPR, MNR, MNSD and FF
	Tenants:	CNR and MNDC

### Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application received on February 16, 2012, the landlords sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on February 4, 2012. The landlords also sought a Monetary Order for the unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlords' application to be amended to include a request for recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application received on February 8, 2012, the tenants sought to have the Notice to End Tenancy set aside and a monetary award for damage or loss under the legislation or rental agreement.

Despite having made application and having been provided with a Notice of Hearing, and having been served with the landlords' Notice of Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing.

Therefore, the tenants' application is dismissed without leave to reapply and the hearing proceeded on the landlords' application in the absence of the tenants.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began on September 1, 2011 under a month to month rental agreement although the tenants were permitted to move in early on August 13, 2011 for prorated rent of \$675. Monthly rent is \$1,350 and the landlords hold a security deposit of \$675 paid in two instalments.

During the hearing, the attending landlord gave evidence that the Notice to End Tenancy of February 4, 2012 had been served after the tenants growing rent arrears rose to \$3,200. The landlord had initially calculated \$2,790, but on recalculating, and supported by a statement of the tenants' ledger and reference to the account the landlords used for the rental unit, the amount found owing was \$3,200.

The tenants' ledger show that from August 13, 2011 to the rent due on February 1, 2012, the total rent due plus security deposit due was \$9,450.

Payments made by the tenants in staggered amounts came total of \$6,250, leaving an outstanding balance of \$3,200.

Therefore, the landlord requested an Order of Possession to take effect two days from service of it on the tenants and a Monetary Order for outstanding rent and filing fee and authorization to retain the security deposit in set off against the balance.

### 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 as the tenant has done in this matter.

In this instance, while the tenants have made application, I find as fact that they did not pay the rent within five days of receiving the notice which remains in effect. .

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 February 15, 2012.

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

I further find that the landlords are entitled to a Monetary Order for the outstanding rent.

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

The monetary award is calculated as follows:

Total rent and security deposit owed from Aug. 13' 2011 to Feb. 2012	\$9,450.00
Sub total	\$9,500.00
Less total rent paid	- 6,250.00
Less retained security deposit (No interest due)	- 675.00
<b>TOTAL</b>	<b>\$2,575.00</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 \$2,575.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlords remain at liberty to make application for any further damage or losses 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: February 28, 2012.

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Residential Tenancy Branch