



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord and the landlord company attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. The landlords' agent also called a witness, who provided affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution, notice of hearing and evidence of the landlord by registered mail on January 21, 2012, the tenant did not attend. The landlords' agent provided a copy of the registered mail receipt issued by Canada Post and testified that the receipt was for sending those documents. Further, a search on the Canada Post website was conducted by the landlords' agent, and the tenant picked up that registered mail package on January 25, 2012. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and the testimony provided by the landlords' agent and the landlords' witness have been reviewed and are considered in this Decision

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

This month-to-month tenancy began on February 1, 2008 and the tenant still resides in the rental unit. Rent in the amount of \$745.00 per month is payable in advance on the 1<sup>st</sup> day of each month. On January 1, 2008 the landlords collected a security deposit from the tenant in the amount of \$362.50 which is still held in trust by the landlords, and no pet damage deposit was collected.

The landlords' agent testified that the tenant failed to pay rent in full when it was due for the month of June, 2011, leaving a balance outstanding of \$715.00. The tenant further failed to pay any rent for the months of July, August, September, October, November, or December, 2011 or for January or February, 2012. On January 7, 2012 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided for this hearing. The notice provided contains 2 pages, is dated January 7, 2012, and contains an effective date of vacancy of January 17, 2012 for unpaid rent in the amount of \$5,930.00. The tenant was in arrears that sum at the time the notice was issued, and the tenant is now further in arrears, for a total of \$6,675.00, and the landlords request a monetary order in that amount, in addition to the \$50.00 filing fee for the cost of this application, and an Order of Possession. The landlords' agent further testified that the landlords have not been served with an application by the tenant disputing the notice to end tenancy.

The landlords' witness testified to serving the tenant with a copy of the notice to end tenancy on January 7, 2012 by posting it to the door of the rental unit. A Proof of Service of the notice was provided in advance of the hearing, which contains a signature of the witness and states that the tenant was served with the notice on January 17, 2012. The witness testified that the document contains an error, and that the notice was, in fact, served on January 7, 2012 by posting it to the door of the rental unit, and the witness taped all four sides of the notice to the door. The witness specifically recalls doing so on that date because it was the first day the witness attended work after the holiday vacation.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end tenancy. In the event that the tenant pays the rent in full within 5 days of being served with the notice, the notice is of no effect. If the tenant fails to pay the rent in full or apply for dispute resolution to dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must move out.

The *Act* also specifies that documents served by posting them to the door of the rental unit or other conspicuous place are deemed to have been served 3 days after posting. In this case, I accept the testimony of the landlords' witness and find that the tenant is deemed to have been served on January 10, 2012. The *Act* also states that incorrect effective dates contained in a notice to end tenancy are automatically changed to the earliest date that complies with the *Act*. In this case, I find that the effective date of the notice ought to read January 20, 2012, and the effective date in the notice is deemed to be changed to that date.

The tenant has not disputed the notice and has not paid the rent in full, and therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on January 20, 2012, and the landlord is entitled to an Order of Possession.

With respect to the monetary order, in the absence of any evidence to the contrary, I accept the testimony of the landlords' agent, and I find that the landlords are entitled to a monetary order for rental arrears in the amount of \$6,675.00 in addition to the \$50.00 filing fee for the cost of this application.

The *Act* also states that in the event that a tenant is ordered to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant, and I find it prudent to make such an order in this case. The landlords currently hold a security deposit in the amount of \$362.50, which was collected on January 1, 2008, and I find that the tenant is entitled to the benefit of interest in the amount of \$5.44 calculated to today's date. Therefore, I order the landlord to keep the security deposit and interest in the amount of \$367.94 and I find that the landlord is entitled to a monetary order for the difference in the amount of \$6,307.06. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. If the tenant is served with the Order of Possession and fails to comply with the order, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I further order the landlord to keep the security deposit and interest totalling \$367.94 in partial satisfaction of the monetary claim and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,357.06.

This order is final and binding on the parties and may be enforced.

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 10, 2012.

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Residential Tenancy Branch