



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDS, MNSD and FF

This application was brought by the landlords on March 12, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on February 21, 2012. The landlords also sought a Monetary Order for unpaid rent/loss of rent, and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance claimed.

### Issue(s) to be Decided

This application requires a decision on whether the landlords are entitled to an Order of Possession and a Monetary Order as requested and authorization to retain the security deposit in set off.

### Background and Evidence

This tenancy began on July 24, 2011. Rent is \$1,900 per month and the landlords hold a security deposit of \$950 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had a rent shortfall of \$1,000 for the rent for January 2012 and had paid no rent for February 2012. In the interim, the tenant remains in the rental unit and has paid not rent for March 2012.

The tenant concurred that she had not paid the rent as claimed by the landlord.

### 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 tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was March 2, 2012 taking into account the three days deemed service of the notice served by posting on February 21, 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 unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed..

The monetary award is calculated as follows:

Rent shortfall for January 2012	\$ 1,000.00
Rent/loss of rent for March 2012	1,900.00
Filing fee	<u>50.00</u>
Sub total	\$4,850.00
Less retained security deposit (No interest due)	<u>- 950.00</u>
<b>TOTAL</b>	<b>\$3,900.00</b>

### Conclusion

The landlords' 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 tenant.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order for **\$3,900.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlords remain at liberty to make application to claim on any further damage or losses as may be ascertained following 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: March 15, 2012.

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Residential Tenancy Branch