



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR

### Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenant who attended the hearing (the tenant) confirmed the landlords' assertion that one of the landlords handed the tenants the 10 Day Notice on March 5, 2012. The tenant also confirmed that one of the landlords handed the tenants a copy of the landlord's dispute resolution hearing package on March 12, 2012. The landlord who attended the hearing (the landlord) also confirmed that the landlords had been provided a copy of the tenants' dispute resolution hearing package. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

### Issues(s) to be Decided

Should this tenancy end on the basis of the landlords' 10 Day Notice and if so are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are either of the parties entitled to recover their filing fees for this application from the other party?

### Background and Evidence

This one-year fixed term tenancy commenced on February 1, 2012. Monthly rent is set at \$1,050.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$525.00 security deposit paid on January 20, 2012. Although the written residential tenancy agreement for this tenancy required the tenants to pay a \$262.50 pet damage deposit, the parties agreed that the tenants have not paid any portion of this deposit.

The landlords issued their 10 Day Notice on March 5, 2012, when the tenants did not pay their March 2012 rent or their pet damage deposit. The 10 Day Notice identified \$1,050.00 in outstanding rent owing at that time and the \$262.50 pet damage deposit. The landlords applied for an end to this tenancy, an Order of Possession and a monetary award of \$1,312.50, which included the \$1,050.00 in unpaid rent and the \$262.50 pet damage deposit.

The parties agreed that the tenants have not paid anything towards the above-noted amounts outstanding from this tenancy. The tenant said that the tenants offered to pay the landlord one-half of the outstanding rent after they received the landlords' 10 Day Notice, but could not pay the remaining one-half or the pet damage deposit until later in March 2012. The parties agreed that the landlords were unwilling to receive partial payments as they were interested in receiving the total amount owing and were not willing to cancel their 10 Day Notice if they did not receive the total amount owing from this tenancy. The tenant said that the tenants did not believe that they could make payments to the landlords once they had applied for dispute resolution seeking a cancellation of the 10 Day Notice.

### Analysis

The 10 Day Notice provides very specific directions as to the process for disputing that Notice. The 10 Day Notice also notes that tenants may dispute the notice for specific reasons such as:

- *They have proof the rent was paid.*
- *They have an order from a dispute resolution officer giving them permission to keep all or part of the rent.*
- *They held part or all of the rent with prior notice to the landlord, for the cost of emergency repairs.*

In this case, I find that the tenants did not have any of the above-noted specific reasons for disputing the 10 Day Notice. Rather, they could not pay all of the monthly rent identified as owing in the landlords' 10 Day Notice. Although the landlords could not issue a 10 Day Notice to end a tenancy on the basis of the tenants' failure to pay the

required pet damage deposit, there is also undisputed evidence before me that the tenants could not pay that deposit when the landlords included that amount in their 10 Day Notice. I find no basis to accept the tenant's claim that the tenants believed that they were prevented from paying the amount identified as owing in the landlords' 10 Day Notice once the tenants had applied for dispute resolution regarding that Notice. I find that the tenants had no basis for making a successful application to dispute the landlords' 10 Day Notice. The tenant testified that the tenants could not and did not pay all of their monthly rent for March 2012 on time or within 5 days of receiving the landlords' 10 Day Notice.

At the hearing, the tenant offered to pay all of the monthly rent owing for March 2012 and the outstanding pet damage deposit. The landlord rejected this offer and requested an end to this tenancy and an Order of Possession on the basis of the tenants' failure to pay all of their rent owing within 5 days of receiving the landlords' 10 Day Notice.

The tenants failed to pay all of the March 2012 rent within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to pay all of the rent identified as owing in the 10 Day Notice within 5 days or lodge a successful application to dispute the landlords' 10 Day Notice led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by March 15, 2012. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I find that the landlords are entitled to a monetary award of \$1,050.00 for unpaid rent for the month of March 2012. I dismiss the landlords' application for a monetary award for the pet damage deposit without leave to reapply, as this tenancy is ending and there is no need to secure this deposit at this time. I allow the landlords to retain the tenants' \$525.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords were successful in their application and the tenants were not, I allow the landlords to recover their \$50.00 filing fee from the tenants. The tenants bear their own filing fee.

### Conclusion

I dismiss the tenants' application in its entirety without leave to reapply.

I allow the landlords' application to end this tenancy on the basis of the 10 Day Notice. I provide the landlords with a formal copy of an Order of Possession to take effect within

2 days of the landlords' service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour in the following terms which allows the landlords to recover unpaid rent for March 2012 and the filing fee for their application and to retain the tenants' security deposit in partial satisfaction of this monetary award:

<b>Item</b>	<b>Amount</b>
Unpaid March 2012 Rent	\$1,050.00
Less Security Deposit	-525.00
Landlords' Recovery of Filing Fee for their application	50.00
<b>Total Monetary Order</b>	<b>\$575.00</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlords' application for a monetary award for the unpaid pet damage deposit without leave to reapply.

This final and binding 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 28, 2012

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Residential Tenancy Branch