



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts.

The Landlords' application named 3 parties as Tenants, namely, C.G., R.R. and A.R. However the tenancy agreement names and is signed by only C.G. and R.R. Given that A.R. is not a party to the tenancy agreement, I find that he is not properly named as a party to these proceedings and accordingly the style of cause is amended by removing him.

The Landlords said they served the Tenants on February 17, 2012 by registered mail with the Application and Notice of Hearing (the "hearing package"). Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so how much?
3. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?

### Background and Evidence

This month-to-month tenancy started on February 1, 2009. The Landlords said rent was \$1,900.00 per month until March 1, 2011 when it was increased pursuant to a Notice of Rent Increase by \$50.00. The Tenants paid a security deposit and a pet deposit of \$950.00 each at the beginning of the tenancy.

The Landlords said the Tenants did not pay rent for February 2012 when it was due and as a result on February 9, 2012, the Landlords served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 9, 2012 by posting it to the rental unit door. The Landlords said the Tenants have not paid the overdue rent for February 2012 and have not paid rent for March 2012.

### Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenants were served with a 10 day Notice to End Tenancy for Unpaid Rent on February 9, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 3 days after it later, or on February 12, 2012. Consequently, the Tenants would have had to pay the rent arrears stated on the Notice or apply to dispute that amount within 5 days or no later than February 17, 2012. I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants.

I also find that the Landlords are entitled to recover rent arrears however I find that the amount of the rent increase that took effect on March 1, 2011 exceeds the permissible amount under the Regulations to the Act for 2011 which was 2.3% or \$43.70. Consequently, I find that the Landlords are entitled to recover unpaid rent of \$1,943.70 for February, 2012, unpaid rent for March 1 – 6, 2012 in the pro-rated amount of \$376.20 and a loss of rental income for March 7 – 15, 2012 in the pro-rated amount of \$564.30. The Landlords may apply for a further loss of rental income for the balance of March 2012 if they are unable to re-rent it for that period. I also find that the Landlords are entitled to recover the \$100.00 filing fee for this proceeding.

The Landlords also applied to recover photocopy and registered mail expenses. However, other than the filing fee, the Act does not make provision for the recovery of any other costs associated with bringing and participating in dispute resolution proceedings and as a result, this part of the Landlords' application is dismissed without leave to reapply.

I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit of \$950.00 and pet damage deposit of \$950.00 in partial payment of the

monetary award. The Landlords will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$2,319.90
Loss of rental income:	\$564.30
Filing fee:	<u>\$100.00</u>
Subtotal:	\$2,984.20
Less: Security Deposit:	(\$950.00)
Pet Deposit:	<u>(\$950.00)</u>
Balance Owing:	\$1,084.20

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$1,084.20** have been issued to the Landlords. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 06, 2012.

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Residential Tenancy Branch