



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding.

The Landlord's agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 15, 2012. According to the Canada Post online tracking system, the Tenant, A.D., received her hearing package on March 21, 2012. The Tenant, R.D., did not pick up his copy of the hearing package. Section 90(a) of the Act says a document delivered by mail is deemed to be received 5 days later (even if the recipient refuses to pick up the mail). Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for a loss of rental income?

### Background and Evidence

This fixed term tenancy started on February 1, 2012 and expires on July 31, 2012. Rent is \$725.00 per month payable in advance on the 1<sup>st</sup> day of each month. A security deposit of \$362.50 was required but not paid.

The Landlord's agent said the Tenants did not pay rent for March 2012 when it was due and as a result, on March 2, 2012, the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2012 by posting it to the rental unit door. The Landlord's agent said the Tenants have not paid the overdue 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 on March 2, 2012 with a 10 Day Notice to End Tenancy 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 three days later or on March 5, 2012. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than March 12, 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 Landlord is entitled to an Order of Possession to take effect two days after service of it on the Tenants.

I also find that the Landlord is entitled to recover rent arrears in the amount of \$725.00 as well as a late fee of \$25.00 for March 2012 pursuant to a term in the Parties' tenancy agreement (and s. 7 of the Regulations to the Act) to that effect. I also find pursuant to s. 72(1) of the Act that the Landlord is entitled to recover from the Tenants the \$50.00 filing fee for this proceeding.

I find that the Landlord's application for a loss of rental income for April 2012 and for a late fee is premature and the Landlord is granted leave to reapply for that relief. The Landlord also applied to recover an NSF fee of \$25.00 for February's rent payment pursuant to a term in the Parties' tenancy agreement. Section 7 of the Regulations to the Act says that a Landlord may charge a Tenant the actual amount the Landlord is charged by its financial institution for a returned payment. However, a Party must provide evidence that they incurred the bank charge in order to recover it and I find in this matter, the Landlord has not done so. Consequently, this part of the Landlord's application is dismissed without leave to reapply.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$800.00** have been issued to the Landlord. 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 26, 2012.

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Dispute Resolution Officer