



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR; MNR; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The Landlord and the Landlord's agent gave affirmed testimony at the Hearing. The Landlord's agent interpreted the Landlord's testimony from the Gujarati language to the English language.

The Landlord's agent testified that the Notice of Hearing documents were mailed to each of the Tenants, via registered mail, to the rental unit on March 5, 2012. The Landlord provided the tracking numbers for the registered documents.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenants were duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being deemed served with the Notice of Hearing documents on March , the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

The Landlord's agent gave the following testimony and evidence:

Monthly rent is \$1,850.00 per month, due the first day of each month. The Tenants did not pay a security deposit. There is no written tenancy agreement between the parties.

This tenancy began in January, 2009. The Tenants fell behind in rent in February of 2011. The Tenants made may promises to catch up on the rent payments, but have only made partial payments towards rent. The Landlord's agent visited the Tenants on March 7, 2012, and was told by the Tenants that they did not intend to pay any more rent.

The Landlord's agent testified that the Tenants have made the following payments towards rent since February, 2011:

Date	Rent due	Rent paid	Balance outstanding
March 1, 2011	\$1,850.00	\$600.00	\$3,100.00
April 1, 2011	\$1,850.00	\$0	\$4,950.00
May 1, 2011	\$1,850.00	\$300.00	\$6,500.00
June 1, 2011	\$1,850.00	\$1,850.00	\$6,500.00
July 1, 2011	\$1,850.00	\$0	\$8,350.00
August 1, 2011	\$1,850.00	\$1,850.00	\$8,350.00
September, 2011	\$1,850.00	\$1,850.00	\$8,350.00
October 1, 2011	\$1,850.00	\$1,850.00	\$8,350.00
November 1, 2011	\$1,850.00	\$0	\$10,200.00
December 1, 2011	\$1,850.00	\$0	\$12,050.00
January 1, 2012	\$1,850.00	\$2,100.00	\$9,950.00
February 1, 2012	\$1,850.00	\$0	\$11,800.00
March 1, 2012	\$1,850.00	\$0	\$13,650.00

On February 15, 2012, the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by handing the Notice to the Tenant JP at the rental unit. A copy of the Notice to End Tenancy (the "Notice") was provided in evidence.

The Notice and the Application both indicate that the Tenants owe \$13,420.00 in unpaid rent, rather than the \$13,650.00 as outlined above. The Landlord's agent testified that he miscalculated the amount owing on the Notice and on the Landlord's application.

### **Analysis**

I accept that the Landlord's agent's affirmed testimony that he served the Tenants with the Notice to End Tenancy by hand delivering the Notice to the Tenant JP on February 15, 2012. I accept that the Tenants did not pay any of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on February 25, 2012. The Landlord is entitled to an Order of Possession and I make that Order, effective 2 days after service of the Order upon the Tenants.

The documents that were served upon the Tenants indicate that they owe the amount of \$13,420.00 to the Landlord effective February 15, 2012. This amount does not include

loss of revenue for the month of March, 2012. If the loss of revenue is added to the amount indicated on the Notice, the sum is \$15,270.00. There is too much of a discrepancy between the amount claimed on the Application and the Notice and the amount the Landlord's agent testified the Tenants owe. Therefore, I find that the Landlord's agent has not provided sufficient evidence to establish the Landlord's monetary claim. This portion of the Landlord's application is dismissed with leave to reapply.

The Landlord has been partially successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

### **Conclusion**

I hereby grant the Landlord an Order of Possession effective **two days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's application for a Monetary Order for unpaid rent is **dismissed with leave to reapply**.

I hereby grant the Landlord a Monetary Order in the amount of **\$50.00** against the Tenant, representing recovery of the filing fee. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 19, 2012.

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Residential Tenancy Branch