



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, 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 a security deposit.

The Landlords said they served the Tenants on March 29, 2012 by registered mail with a copy of the Application and Notice of Hearing (the "hearing package"). Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up the mail). 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. Are there grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

### Background and Evidence

This tenancy started on November 1, 2011. There is no written tenancy agreement. The Landlords said that rent is \$975.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Landlords also said the Tenants did not pay a security deposit or a pet damage deposit.

The Landlords claim that the Tenants had rent arrears for November 2011 and did not pay rent in full for March 2012 and as a result on March 17, 2012, a process server served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the rental unit door. The Landlords said the Tenants have not paid the past due rent and have not paid rent for April 2012. The Landlords claim that the Tenants have recently removed many of their belongings from the rental unit but have not given any notice to the Landlords that they have vacated.

### 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 or Utilities on March 17, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenants were deemed to have received the Notice three days later or on March 20, 2012. Consequently, the Tenants would have had to pay the rent arrears alleged on the Notice or apply to dispute that amount no later than March 26, 2012 (given that the 25<sup>th</sup> fell on a non-business day). 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.

In the absence of any evidence from the Tenants to the contrary, I also find that the Landlords are entitled to recover rent arrears of \$475.00 for November 2011, \$475.00 for March 2012, pro-rated rent for April 1 – 17, 2012 in the amount of \$552.50 and a loss of rental income for April 18 – 30, 2012 in the pro-rated amount of \$422.50. I also find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding.

### Conclusion

The Landlords' application to keep a security deposit is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$1,975.00** 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: April 17, 2012.

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Residential Tenancy Branch