



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord 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 in partial payment of those amounts.

The Landlord's agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered on March 23, 2012. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later (even if they refuse 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 keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on May 23, 2009. Rent was \$1,005.00 per month until February 1, 2012 when it increased to \$1,048.00 per month. Rent is due in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$487.50.

The Landlord said the Tenants had rent arrears for January and February 2012 and did not pay rent in full for March 2012 and as a result, on March 5, 2012, she served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 5, 2012 by posting it to the rental unit door. The Landlord's agent said the Tenants made some partial payments for which they were given receipts for "use and occupancy only." The Landlord's agent also said the Tenants have not paid rent for April 2012 in full and now have total rent arrears of \$3,021.00.

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 5, 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 three days after it was posted, or on March 8, 2012. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than March 13, 2012.

I find that the Tenants have not paid the overdue rent in full within the 5 days granted under s. 46(4) of the Act 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 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears of **\$2,921.00** as follows:

Balance as of October 24, 2011:	\$5.00	
November Rent:	\$1,005.00	
Payment, Nov. 24/11:		\$300.00
Payment, Nov. 29/11:		\$350.00
December 2011 Rent:	\$1,005.00	
Payment, Dec. 16/11:		\$285.00
Payments, Dec. 30/11:		\$660.00
January 2012 Rent:	\$1,005.00	
Payment, Jan. 5/12:		\$275.00
Payment, Jan. 18/12:		\$150.00
February 2012 Rent:	\$1,048.00	
Payment, Feb. 01/12:		\$60.00
Payment, Feb. 16/12:		\$190.00
Payment, Feb. 28/12:		\$60.00
March 2012 Rent:	\$1,048.00	
Payment, Mar. 07/12:		\$139.00
Payment, Mar. 26/12:		\$224.00
Payment, Mar. 30/12:		\$90.00
April 2012 Rent:	\$1,048.00	
Payment, Apr. 02/12:		\$150.00
Payment, Apr. 10/12:		<u>\$310.00</u>
<b>Subtotals:</b>	<b>\$6,164.00</b>	<b>\$3,243.00</b>

In calculating the amount of rent arrears, I have not included late and NSF fees included in the Landlord's account ledger as no claim was made for those amounts.

I also find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlord also sought to recover mailing expenses however, other than the filing fee, the Act makes no provision for a party to recover costs associated with bringing and participating in dispute resolution proceedings. Consequently, this part of the Landlord's application is dismissed without leave to reapply.

I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$487.50 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing of \$2,483.50.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$2,483.50** 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: April 16, 2012.

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Residential Tenancy Branch