



# 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 is the Landlords' application for an Order of Possession for Cause; and Order of Possession for Unpaid Rent; a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the rental unit on April 13, 2012. The Landlord provided a copy of the registered mail receipt and tracking numbers in evidence.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

### **Issues to be Decided**

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order?

### **Background and Evidence**

The Landlord gave the following testimony:

There is no written tenancy agreement between the parties. Monthly rent is \$850.00, due on the first day of the month. The Landlord stated that the Tenant paid a security deposit in the amount of \$350.00 at the beginning of the tenancy, but she was not certain when the tenancy began. She stated that she believed that it began in the summer of 2008, but at a Hearing on March 22, 2012, the Tenant stated that it began in August of 2007.

At the previous Hearing on March 22, 2012, a Dispute Resolution Officer dismissed the Tenant's Application to cancel a Notice to End Tenancy for Cause and found that the tenancy ends on April 30, 2012. The Landlord stated that she did not know that she could ask for an Order of Possession and therefore none was provided. A copy of the March 22, 2012, Decision was provided in evidence.

The Landlord testified that on March 22, 2012, the Dispute Resolution Officer also found that the Landlord was entitled to an extra \$100.00 a month from the Tenant in compensation for additional utilities due to unauthorized additional occupants in the rental unit.

The Landlord testified that the Tenant and the unauthorized occupants remain in the rental unit and that the Tenant has not paid any rent for April, 2012, or any money towards extra utilities for April 2012. The Landlord seeks an Order of Possession for unpaid rent. She stated that the Tenant has advised that he has no intention of paying any more rent and stated that he will stay in the rental unit until he is evicted, which he believes could take 6 months.

The Landlord also seeks a monetary award for \$850.00 for unpaid rent and \$100.00 for utilities. She stated that she doesn't think she will be able to re-rent the rental unit in May and therefore seeks an additional \$850.00 for loss of revenue.

### **Analysis**

I accept that the Landlord's evidence that she served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on April 2, 2012. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on April 15, 2012. I find that the Tenant is overholding and that the Landlords are entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

The Decision of March 22, 2012, finds that the Tenant paid and the Landlords accepted an additional \$100.00 per month for extra utilities. The Tenant paid this charge for five consecutive months prior to the March 22 Hearing date, and I find that the Landlords are entitled to compensation for the extra utilities in April resulting from the Tenant's unauthorized occupants. I accept the Landlord's undisputed evidence that the Tenant has not paid any rent or any moneys towards extra utilities for April 2012.

I find the Landlords' application for loss of revenue to be premature and grant them leave to reapply with respect to loss of revenue.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit and accrued interest towards partial satisfaction of the Landlords' monetary award. The Act requires all tenancy agreements to be in writing, which is the responsibility of a landlord. There is no written tenancy agreement in place and therefore for the purposes of calculating interest, I find that the security deposit was paid on August 1, 2007, pursuant to the Tenant's testimony during the March 22 Hearing. Interest has accumulated in the amount of \$7.49 on the security deposit.

The Landlords have been successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlords a Monetary Order, calculated as follows:

Unpaid rent for April, 2012	\$850.00
Compensation for extra utilities in April due to unauthorized occupants	\$100.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,000.00
Less security deposit and accrued interest	- \$357.49
<b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF</b>	<b>\$642.51</b>

### **Conclusion**

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

I hereby provide the Landlords a Monetary Order in the amount of **\$642.51** for service upon the Tenant. This Order 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: April 26, 2012.

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Residential Tenancy Branch