



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The application has been amended to include the correct spelling of the male tenant's name. The landlord acknowledged that the name should be changed to that provided by the male tenant.

The landlord is aware that the tenants are away from home for extended periods of time, working in Saskatchewan. The Notice of hearing was sent to the rental unit via registered mail sent on April 19, 2012. The tenants had been away working and returned home on May 4, 2012. They became aware of the hearing on May 1, 2012, as the result of a telephone call to the landlord's agent. The tenants did not have the application or the landlord evidence before them, as they have just received the notice of registered mail.

The male tenant indicated an accurate understanding of the application and the claim made by the landlord; he presented all testimony for both respondents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid December, 2011, rent?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This current tenancy commenced on December 1, 2011, when the tenants were moved from a different unit owned by the landlord. There had been a leak in the previous unit, which resulted in the tenant's moving to the current rental unit. There is no current signed tenancy agreement.

The parties agreed to the following facts:

- Rent is \$925.00 due on the first day of each month;
- The landlord's agent and the tenant had discussed a verbal agreement to compensate the tenants for damages resulting from issues related to the initial tenancy;
- That the landlord's head office eventually determined the tenants were not to receive compensation;
- That rent for December, 2011, was not paid.

The tenant stated that he did not pay December, 2011 rent as he had been told rent was not due, as a result of damages they had suffered during the first tenancy.

The tenant was away working in Saskatchewan and rent payments were made via direct deposit. The tenant indicated that his co-tenant also travelled to Saskatchewan.

The landlord made an error and deducted rent owed for February and March 2012, from the tenant's brother's bank account. When the landlord discovered this error they reversed the payment, resulting in further rent arrears. The tenant had not expected rent deductions, as he believed he had an agreement with the landlord for compensation. The parties are now not able to agree as to what, if any, rent abatement the tenant was entitled to for a loss that may have been suffered during the initial tenancy.

The landlord stated that on April 2, 2012, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 12, 2012, was served by posting to the tenant's door. The Notice was issued in the sum of \$925.00 for December, 2011, rent owed.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$925.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenant stated that his brother called him sometime around April 2, 2012, to report that a document had been posted to the door. The tenant understood that the landlord wanted rent payments and mailed a certified cheque to a co-worker, who hand-delivered the cheque to the landlord on April 12, 2012. The landlord refused to accept the payment.

The tenant testified that the first time he saw the Notice ending tenancy was May 4, 2012, when he returned home from Saskatchewan. He had called the landlord on May

1, 2012, and discovered that the hearing was scheduled. The tenant then travelled home in an attempt to deal with the tenancy problems.

### Analysis

There was no dispute that the tenants are away working for extended periods of time, during which any documents posted to their door would not been delivered until one of the co-tenants returned home. The tenants rent the unit, but I find they effectively reside, for much of the time, in another province. This is a situation that is not unknown to the landlord.

Therefore, as referenced in the introduction portion of this decision, I determined that the tenants were sufficiently served with Notice of the hearing on May 1, 2012, when the male tenant spoke to the landlord's agent. I only find service has been sufficiently completed as the tenants attended the hearing and did not request an adjournment.

As the landlord understood the Notice to end tenancy posted to the tenant's door on April 2, 2012, would not likely be retrieved by the tenants within 3 days, I find that the tenants were served with the 10 Day Notice to End Tenancy effective May 4, 2012; the day the tenant's returned from work when they received and were able to view the Notice.

As the Notice was served effective May 4, 2012, I find that the tenants have until the end of the day on May 9, 2012, to pay the rent upon which the Notice was issued; December, 2011. The tenants are at liberty to dispute the Notice but were warned that any claim for compensation that relates to the tenancy that existed prior to December, 2011, is separate from issues arising from the tenancy that commenced on December, 1, 2011, onward. The parties appear to have considered the original tenancy as part of the current tenancy; however, I find that when the tenants relocated to the current address, they created a new tenancy agreement bound by the standard terms contained in the Regulation.

As there is no dispute December 2011, rent has not been paid, I find that the landlord is entitled to a monetary Order in the sum of \$925.00, for December, 2011, rent.

If the tenants do not pay the rent in dispute, that is due by May 9, 2012, the landlord is at liberty to reapply requesting an Order of possession based on the Notice issued on April 2, 2012, and any further monetary claim.

The balance of any rent owed from months beyond December, 2011, has not been decided. However, the tenants are warned that in the absence of a confirmed agreement with the landlord, they may not withhold rent.

In order to ensure future service of documents I find, pursuant to section 62(3) of the Act, that the tenants must immediately provide the landlord with an address that may be used for service purposes during the tenancy. This address may be that where the tenants work and appear to reside for the majority of time. If the tenants fail to immediately provide the landlord with a service address for registered mail, I find that in the future the landlord may rely upon the rental unit address as the service address for service of documents sent via registered mail. The landlord is also at liberty to apply for substitute service.

I have not made any finding in relation to the request for an Order of possession based on the Notice ending tenancy issued on April 2, 2012; as the request for an Order of possession is premature and may be made after May 9, 2012.

As the failure to pay December, 2011, rent is the result of a miscommunication between the parties, which I find occurred due to what the tenants reasonably believed, was an agreement for compensation, an arrangement that had initially been acknowledged by the landlord's agent, I decline filing fee costs to the landlord.

The parties were encouraged to call the Residential Tenancy Branch prior to May 9, 2012, in order to determine the outcome of the hearing.

### Conclusion

Based on these determinations I grant the landlord a monetary Order in the sum of \$925.00 for December, 2012, rent. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenants have until May 9, 2012, to pay December, 2011, rent owed or to dispute the 10 Day Notice to End Tenancy for Unpaid rent that was issued on April 2, 2012.

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: May 08, 2012.

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Residential Tenancy Branch