



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**CNR, OPR, MNR, FF**

### **Introduction**

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a 10 Day Notice to end Tenancy for Unpaid Rent and to recover filing fee costs.

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.

The parties confirmed receipt of the Notices of Hearing and all evidence.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent or should the Notice be cancelled?

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

Is either party entitled to filing fee costs?

### **Background and Evidence**

This fixed-term tenancy commenced on May 1, 2011 and is to end on April 30, 2013. Rent is \$2,000.00 per month, due on the first day of each month. The parties confirmed that they recently signed a replacement tenancy agreement that had the same terms as

the original; although the tenant does dispute the content of the addendum. The tenant confirmed the terms in dispute do not affect rent payment terms.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent, on June 9, 2012; when the landlord personally delivered the Notice, with a witness present.

The Notice was issued on June 8, 2012, and had an effective date of June 20, 2012. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,000.00 of June 2012, rent owed, 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.

Within 5 days of receipt of the Notice the tenants disputed the Notice.

The tenant confirmed that June, 2012 rent in the sum of \$1,000.00 and July rent in the sum of \$2,000.00 have not been paid. The tenant stated that the landlord had understood he would be late making rent payments; the landlord denied having given the tenant any permission to pay the rent late.

### Analysis

Based on the confirmation of the tenant and the evidence before me, I find the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on June 20, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants disputed the Notice but have not paid the rent that is due; therefore, I find that the tenant's application to dispute the Notice is dismissed.

I find, pursuant to section 46(5) of the Act, that the tenants accepted that the tenancy has ended effective June 20, 2012. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenants.

When the terms of a tenancy agreement are in dispute I rely upon the written agreement which, in this case, clearly requires rent payments be made on the first day of each month. In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$3,000.00 for June and July, 2012, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of **\$3,050.00**, which is comprised of unpaid June and July, 2012, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,050.00. 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 tenant's application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 05, 2012.

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Residential Tenancy Branch