



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord's agent said on June 21, 2012 she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail. According to the Canada Post online tracking system, the Tenants received one of the hearing packages on June 23, 2012. Consequently, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

The Landlord's agent said the Tenants gave her written notice that they intended to vacate the rental unit at the end of July 2012. As a result, the Landlord's agent said the Tenants wanted her to cancel the dispute resolution hearing but she told them she would only agree to do so if the Tenants paid their June rent no later than June 29, 2012 and their July rent in full by July 1, 2012. The Landlord's agent said the Tenants signed an agreement to this effect. The Landlord's agent said however, that the Tenants paid their rent for June on July 3, 2012 and on the same day gave her a cheque in payment of rent for July 2012 but it was returned for non-sufficient funds. The Landlord's agent said she advised the Tenants about the returned cheque and they made only a partial payment thereafter so that rent for July is still outstanding. Consequently, the Landlord's agent said the Tenants have not met the conditions for having this hearing cancelled.

### 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?

### Background and Evidence

This month-to-month tenancy started on July 1, 1999 at a rental rate of \$950.00 per month. The Landlord's agent said that rent has been increased over the term of the tenancy, the most recent being pursuant to a Notice of Rent Increase that took effect on November 1, 2011. Rent is currently \$1,145.00 per month and is due in advance on the

1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$475.00 at the beginning of the tenancy.

The Landlord's agent said the Tenants did not pay rent for June 2012 when it was due and as a result on June 4, 2012, the Landlord's agent served the Tenant, N.L., in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2012. The Notice alleged there were rent arrears of \$1,530.00. The Landlord's agent said \$385.00 of this amount was for rent arrears for May 2012.

The Landlord's agent said the Tenants made a payment of \$385.00 on June 5, 2012 and a payment of \$1,145.00 on July 3, 2012 for which they were given receipts stating that the payments were accepted for use and occupancy only. The Landlord's agent said the Tenants' rent cheque for July 2012 was returned for non-sufficient funds and they made a payment of \$200.00 in cash on or about July 6 for which they were given a receipt stating that the payment was accepted for use and occupancy only.

### 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 on June 4, 2012, the Tenants were served in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2012. Consequently, the Tenants would have had to pay the rent arrears set out on the 10 Day Notice or if they believed the amount was not owed, apply to dispute that amount no later than June 11, 2012 (given that the 9<sup>th</sup> fell on a non-business day).

I find that the Tenants did not pay 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 in the amount of \$945.00 for July 2012 as well as the \$50.00 filing fee for this proceeding.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$995.00** 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: July 11, 2012.

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Residential Tenancy Branch