



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

This application was brought by the landlords on June 14, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on June 9, 2012. The landlords also sought a Monetary Order for unpaid rent and loss of rent, utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the parties concurred that the tenants had vacated the rental unit on June 30, 2012 and the request for the Order of Possession was withdrawn.

### Issue(s) to be Decided

This application requires a decision on whether the landlords are entitled to a Monetary Order for unpaid rent and utilities as claimed and authorization to retain the security and pet damage deposits in set off against the balance owed.

### Background and Evidence

This tenancy began on April 1, 2012 under a fixed term rental agreement to February 28, 2013. Rent was \$1,600 per month and the landlords hold security and pet damage deposits totalling \$1,600 paid at the beginning of the tenancy.

In addition, the landlords gave evidence that, as a pre-tenancy agreement, the male tenant occupied one room of the rental unit in March 2012 at an agreed rate of \$20 per day and stayed for 25 days for which they claim \$500 for the month. The landlords provided written statements from a carpet layer and painter stating that both had seen the male tenant resident in the unit during March 2012, and the carpet layer specifying that he was resident there on March 5, 2012.

The male tenant stated there was no agreement that he would pay rent for the month.

The landlords submitted a copy of a cheque dated May 1, 2012 for \$1,600 for the May rent which was returned NSF. The tenants claimed they subsequently paid the May rent in cash, but provided no receipt or other corroborating evidence.

The tenants concur with the landlord's claim that they did not pay the rent for June 2012 because they had received the Notice to End Tenancy and needed the money for a security deposit for a new rental unit.

The landlord also submitted a copy of a hydro bill for the period from March 6, 2012 to May 2, 2012 for \$569.36. After deducting \$100, presumably for the period when only the male tenant was in residence, and then claiming 75 per cent of the remainder as the subject upper suite was larger and had more occupants, the landlords claim \$352 from the tenants.

The tenants stated that they had not agreed to pay hydro. However, I note that Item 3.b) of the standard form Rental Agreement the rental agreement which provides a selectable list of items included in the rent has water and garbage collection selected as included but not electricity or heat. On other words, by the agreement the tenants have indeed agreed to pay for their own hydro, although the agreement is silent on the apportionment between upper and lower suites.

The tenants also claimed that the tenants' son who lives in the lower unit has a grow op which would consume very large amounts of hydro power, an assertion emphatically challenged by the landlords,

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, the Notice to End Tenancy was lawful and valid.

As to the landlords' claim for \$500 for the per diem rental of a single room by the male tenant prior to the tenancy, I find that, as a matter of probability, that the landlords would

not have offered free rent and I prefer their evidence on the matter. The claim is allowed.

As to the contested rent for May 2012, given the NSF cheque of May 1, 2012 and the fact that the tenants were unable to provide a receipt or any other corroborating evidence of having paid the May rent, and given that they did not apply to contest the Notice to End Tenancy of June 9, 2012, I do not find their claim of having paid it in cash to be credible. The claim is allowed.

Similarly, in view of the fact that the rental agreement made the tenants responsible for heat and hydro, I do not find the tenants' claim to the contrary to be credible nor do I find the claim of a downstairs grow op to be credible. The claimed \$352 is allowed.

That the rent for June 2012 was not paid was conceded by the tenants.

As to loss of rent for July, I find that as I cannot determine when new tenants might take occupancy, this claim is dismissed with leave to reapply.

As the landlords' application has succeeded on its merits, I find that they are entitled to recover the filing fee for this proceeding from the tenants.

As authorized under section 72 of the *Act*, I hereby authorize and order that the landlords retain the security and pet damage deposits in set off against the balance owed to them.

Thus, I find that the landlords are entitled to a Monetary Order calculated as follows:

March 2012 pre-tenancy room rent for male tenant	\$ 500.00
March 6 to May 2, 2012 utilities	352.00
June 2012 rent	1,600.00
Filing fee	<u>100.00</u>
Sub total	\$4,152.00
Less retained security and pet damage deposits	- 1,600.00
<b>TOTAL</b>	<b>\$2,552.00</b>

### Conclusion

In addition to authorization to retain the tenants' security deposit in set off against the balance owed, the landlords' copy of this decision is also accompanied by a Monetary Order for **\$2,552.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 05, 2012.

---

Residential Tenancy Branch