



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

### Introduction

This application was brought by the landlord on July 11, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on July 4, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested.

### Background and Evidence

This tenancy began on May 16, 2012 with the written agreement commencing on June 1, 2012. Rent was set at \$870 per month and the tenants agreed to pay a security deposit of \$435.

During the hearing, the landlord gave evidence that the tenants' cheque for \$870 for the two weeks rent for May 2012 and the security deposit issued on May 21, 2012 was returned NSF on May 29, 2012.

She stated that the tenants then made a series of payments of \$400 on June 4, 2012, \$600 on June 18, 2012, earned a credit in exchange for services of \$393 on June 29, 2012, paid \$700 on July 18, 2012 and \$196.84 on July 27, 2012.

She stated that the tenants had issued a cheque on July 1, 2012 for \$1,675 but subsequently asked the landlord not to deposit it as the account had insufficient funds.

Therefore, the landlord requested an Order of Possession to uphold the Notice to End Tenancy of July 4, 2012 and a Monetary Order for the unpaid rent, NSF fee, late fees and recovery of the filing fee for this proceeding.

The landlord understands that any amount credited to the security deposit may only be retained in set off against the total balance owed.

The landlord stated that the tenants have promised to bring their account into balance by August 8, 2012, and if they are able to do so, she will not enforce the Order of Possession.

### 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, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was July 14, 2012.

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenants.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

<b>Total amount owed by tenants</b>		
May 2012 rent	435.00	
May 2012 NSF fee	25.00	
May 2012 late fee	25.00	
June 2012 rent	870.00	
June 2012 late fee	25.00	
July 2012 rent	870.00	
July 2012 late fee	25.00	
Filing fee	<u>50.00</u>	
Sub total of amount owed by tenants	\$2,710.00	\$2,710.00
<b>Total amount paid by tenants</b>		
June 4, 2012	\$ 400.00	
June 18, 2012	600.00	
June 29, 2012 (Credit for services performed)	393.00	
July 18, 2012	700.00	
July 27, 2012	<u>196.84</u>	
Sub total of tenants' credits	\$2,289.84	- <u>2,289.84</u>
<b>Amount required to bring account into good standing</b>		<b>\$ 420.16</b>
Less security deposit if set off against balance		<u>- 435.00</u>
<b>Amount owed at July 31, 2012 if security deposit set off</b>		<b>\$ - 14.34</b>

If the tenancy continues, the tenants account may be brought into good standing by payment of \$420.16 by the tenants.

If the tenancy ends, then the tenants have a remainder in the security deposit of \$14.34.

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

As I cannot be certain as to whether and when the tenancy ends, the landlords' request for a Monetary Order is dismissed with leave to reapply.

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 31, 2012.

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Residential Tenancy Branch