



# 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 landlords on July 18, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid served in person on July 4, 2012. However, that notice was defective as it lacked the signature as required under section 52 of the Act and was served again and received on July 18, 2012.

The landlords also sought a Monetary Order for unpaid rent, damage or loss under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. A claim for damage to the rental unit was withdrawn as the landlord has not yet regained possession of the rental unit to assess its condition.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began on January 1, 2010. Rent was reduced from \$1,850 to \$1,800 per month and the landlords hold security and pet damage deposit of \$925 and \$450 respectively.

During the hearing the parties gave evidence that the tenant had been unable to pay the rent due on July 1, 2012 due to a loss of employment. In the interim since service of the notice, the tenant has vacated the rental unit, but has not removed all of her furnishings or returned the keys.

Therefore, the landlords requested an Order of Possession and a Monetary Order for the unpaid rent, recovery of the filing fee for his proceeding and authorization to retain the security and pet damage deposits in set off.

### 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 tenant 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 tenant 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 tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was July 28, 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 tenant.

I further find that the landlords are entitled to a Monetary Order for the unpaid rent for July and for one-half of August 2012, as it remains possible that new tenants may be found for August 15, 2012 if the tenant keeps to her intention to provide vacant possession and a cleaned rental unit within two or three days.

As the application has succeeded on its merits, I find that the landlords are entitled to recover the filing fee for this proceeding from the tenant and, as authorized under section 72 of the *Act*, I order that the landlord shall retain the security and pet damage deposits in set off against the balance owed.

Thus, I find that the tenant owes to the landlords an amount calculated as follows:

Rent for July 2012	\$1,800.00
Filing fee	<u>50.00</u>
Sub total	\$2,750.00
Less retained security deposit (No interest due)	- 925.00
Less retained pet damage deposit (No interest due)	<u>- 450.00</u>
<b>TOTAL</b>	<b>\$ 1,375.00</b>

### Conclusion

The landlords' 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.

In addition to authorization to retain the security and pet damage deposits in set off, the landlords' copy of this decision is also accompanied by a Monetary Order for **\$1,375.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlords remain at liberty to make application for any further damage or losses as may be ascertained at the conclusion of the tenancy.

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: August 09, 2012.

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Residential Tenancy Branch