



# 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 18, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on July 6, 2012. The landlord also sought a Monetary Order for unpaid rent, 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 A claim for damage to the rental unit was withdrawn as the landlord has not regained possession of the rental unit.

Despite having been served with the Notice of Hearing sent by registered mail on July 18, 2012, 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 the monetary award as requested.

### Background and Evidence

This tenancy began on September 1, 2010. Rent is \$1,079 per month including parking and the landlord holds a security deposit of \$524 paid at the beginning of the tenancy.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served after the tenant had failed to pay \$234 of the rent due on July 1, 2012.

The agent stated that the tenants had paid the July 2012 rent shortfall on August 1, 2012, but had not paid the rent August rent at the time of the hearing on August 9, 2012. Therefore, I exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to request the rent for August 2012.

The landlord seeks 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 deposit 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 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 19, 2012 taking into account the three days deemed service of notice served by posting..

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent. 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 and, as authorized under section 72 of the *Act*, I order that the landlord shall retain the security deposit in set off against the balance owed.

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

Rent for August 2012	\$1,079.00
Sub total	\$1,129.00
Less retained security deposit (No interest due)	<u>- 524.00</u>
<b>TOTAL</b>	<b>\$ 605.00</b>

### 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.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$605.00**, 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: August 09, 2012.

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Residential Tenancy Branch