



# 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 31, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on July 17, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began on November 1, 2011. Rent is \$1,400 per month due on the first, and the landlord holds a security deposit of \$700 paid on November 1, 2011.

During the hearing, the landlord gave uncontested evidence that the tenants had paid no rent from December 2011 to July 2012 inclusive except for a \$1,100 payment in May 2012. Rent for August 2012 was paid.

The attending tenant acknowledged the unpaid rent claimed by the landlord and proposed a repayment schedule for the landlord's consideration.

The landlord stated that he had delayed action as he had accepted the tenants' repeated promises to catch up on the rent arrears.

He requested an Order of Possession effective two days from service and the Monetary Order.

### 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 27, 2012.

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

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and that he is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off. The monetary award is calculated as follows:

Unpaid rent for	December 2011	\$ 1,400.00
	February 2012	1,400.00
	March 2012	1,400.00
	April 2012	1,400.00
	May 2012	300.00
	June 2012	1,400.00
	July 2012	1,400.00
Filing fee		<u>100.00</u>
Sub total		\$10,200.00
Security deposit set off		<u>- 700.00</u>
<b>TOTAL</b>		<b>\$ 9,500.00</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 of it on the tenant.

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 \$9,500, 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 28, 2012.

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Residential Tenancy Branch