



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the tenants did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on April 1, 2012. Monthly rent of \$800.00 is due and payable in advance on the first day of each month, and a security deposit of \$400.00 was collected.

When the landlord attended the unit on July 2, 2012 to collect July's rent, the tenants verbally informed him that they would be vacating the unit at the end of July. The parties then appear to have agreed that the landlord would retain the security deposit and apply it against half of July's rent. However, as rent had still not been paid in full when due on July 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent (\$400.00) dated July 3, 2012. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted in evidence. Subsequently, the landlord received a \$400.00 cheque payment from the tenants for the balance of July's rent.

The landlord claimed that following this, the tenants declined his requests to show the unit to prospective new renters. While the landlord is unable to confirm exactly when

the tenants vacated the unit, he considers that it may have been sometime in August. The tenants left no forwarding address, and the landlord testified that he seeks an order of possession prior to entering the unit and / or changing the locks.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act addresses the **Form and content of notice to end tenancy**, and provides, in part, as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants failed to comply with the above statutory provisions in their manner of ending the tenancy.

I further find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated July 3, 2012. The tenants paid the \$400.00 shown as outstanding on the 10 day notice and, as noted above, the parties seemingly agreed that the landlord would retain the security deposit in lieu of an additional payment of \$400.00 for the balance of

July's rent. Thereafter, while the date is not certain, it is understood that the tenants may have vacated the unit sometime in August 2012. Following from all of the above, I hereby issue an order of possession in favour of the landlord.

As for the monetary order, in consideration of the tenants' verbal notice on July 2, 2012 to end tenancy at the end of July, in view of the tenants' having declined to permit the landlord to show the unit to prospective new renters, and in the absence of any conclusive evidence in regard to exactly when the tenants vacated the unit, I find on a balance of probabilities that the landlord has established entitlement to \$1,250.00, which is comprised as follows:

\$400.00: *unpaid rent for July (security deposit)*  
\$800.00: *unpaid rent / loss of rental income for August*  
\$50.00: *filing fee*

I order that the landlord retain the security deposit of \$400.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$850.00 (\$1,250.00 - \$400.00).

### Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$850.00. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

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