



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNDC, MNSD and FF

### Introduction

This hearing was convened on the landlord's application of August 27, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 7, 2012 by registered mail. The landlord also sought a monetary award for unpaid rent, anticipated loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

Although this was a co-tenancy, only the male tenant appeared on behalf of the tenants and noted that he had left the tenancy in mid-April 2012. However, as I have no written evidence that the landlord had agreed to release him from the fixed term agreement, I must find that he remains jointly and severally liable for any monetary award to the landlord. The male tenant was advised that branch jurisdiction does not include tenant to tenant disputes and he may have a Small Claims Court cause of action against his co-tenant. However, he remains as a respondent in the present matter.

The landlord's agent (hereinafter "the landlord") submitted proof that both parties had been served with the Notice of Hearing sent by registered mail on August 31, 2012 (and again by email), I find that both tenants were properly served.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession and a monetary award for the claims submitted and in what amounts.

### Background and Evidence

This tenancy began on September 1, 2011 as a co-tenancy under a one-year fixed term rental agreement. Rent was \$1, 500 per month and the landlord holds a security deposit of \$750 and a pet damage deposit of \$750 both paid shortly before or at the beginning of the tenancy. As noted, the male tenant stated and the landlord concurred that he had left the tenancy in mid April 2012,

During the hearing, the landlord gave evidence that the 10–day Notice to End Tenancy had been served by registered mail sent on August 7, 2012 and set an end of tenancy date of August 22, 2012 to allow for the five days for deemed service of notices served by mail.

The landlord stated that she had received a voice mail message from the female tenant on August 21, 2012 stating that she was out of town but that the rental unit would be cleared by August 25, 2012. None of the tenant's property appeared to have been removed at that time and a substantial amount remained at the time of the hearing.

The landlord stated that in the interim, the August 2012 rent remains unpaid, the female tenant remains in possession of the rental unit and has not paid the rent due on September 1, 2012.

The landlord now requests an Order of Possession and a monetary award for the unpaid rent, authorization to retain the deposits in set off and recovery of the filing fee.

The landlord also submitted 20 photographs illustrating an estimated \$3,475 in damage to the rental unit and will be making application for an additional monetary award when she is able to regain possession of the rental unit and have the repairs completed.

### 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 August 22, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect 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 for August and September 2012. As authorized under section 72 of the *Act*, and as agreed to by the attending tenant, I authorize the landlord to retain the security and pet damage deposits in set off against the unpaid rent.

As the application has succeeded on its merits, I find that the landlord should 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:

Rent for August 2012	\$1,500.00
Filing fee	<u>50.00</u>
Sub total	\$3,050.00
Less retained security deposit (No interest due)	- 750.00
Less retained pet damage deposit (No interest due)	<u>- 750.00</u>
<b>TOTAL</b>	<b>\$1,550.00</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 tenants.

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$1,550.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make a further 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: September 28, 2012.

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Residential Tenancy Branch