



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant   MNDC, FF, O  
                                 Landlord   OPR, MNR, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an order of possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on August 15, 2012, in accordance with section 89 of the Act.

The Tenant did not attend the hearing; therefore I dismiss the Tenant's application without leave to reapply.

The Landlord said the Tenants named the purchaser B.P. in the Tenants' application as the second landlord and the new purchaser has not taken possession of the property as of yet; therefore the purchaser should not be named on the application. I accept the Landlord's testimony and I dismiss the purchasers name from the Tenants application.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to unpaid rent and if so how much?

## Background and Evidence

One of the Tenants A. S. moved into the unit on June 1, 2007, and this tenancy agreement began on January 1, 2009 as a month to month tenancy. Rent is \$1,650.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of 750.00 on June 1, 2007 which was carried forward to this tenancy.

The Landlord said he issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property as he is selling the property. The Two Month Notice to End Tenancy was dated July 29, 2012 and the effective vacancy date on the Notice is October 1, 2012. The Landlord said the Tenants gave him written notice to end the tenancy on August 1, 2012 that indicated that they would be moved out of the rental unit by August 31, 2012. As a result of that Notice the Tenants did not pay the August rent as under the 2 Month Notice a tenant receives compensation for the Landlord ending the tenancy of one month's rent. The Tenant said in his submission that the compensation for 1 month's rent was used for the August, 2012 rent.

The Landlord continued to say that the Tenants did not move out of the unit on August 31, 2012 and they are still living in the unit and they have not paid the September, 2012 rent of \$1,650.00. Consequently the Landlord requested an order of possession for October 1, 2012 as stated on the 2 Month Notice to End Tenancy and a monetary order for unpaid rent of \$1,650.00 and the \$50.00 filing fee for this proceeding.

## Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the Landlord's testimony and evidence that the rent is unpaid for September, 2012 in the amount of \$1,650.00. The Tenant did not have the right under the Act to withhold part or all of the rent for September, 2012, therefore I find in favour of the Landlord for the unpaid rent of \$1,650.00 for the month of September, 2012 in the amount of \$1,650.00.

Further as the Tenants gave written notice to the Landlord that they would vacate the rental unit on or before August 31, 2012 and they have not done so; I find the Landlord has established grounds to be awarded an Order of Possession to support the 2 Month Notice to End Tenancy. I grant the Landlord an Order of Possession to take effect on October 1, 2012 at 1:00 p.m.



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As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Unpaid rent:	\$1,650.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,700.00
Balance owing		\$1,700.00

## Conclusion

An Order of Possession effective at 1:00 p. m. October 1, 2012 and a Monetary Order in the amount of \$1,700.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply.

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*.

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Residential Tenancy Branch