



# 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 is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were personally served on each of the Tenants at the rental unit on August 15, 2012. The Landlord provided a Certificate of Service in evidence.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that all of the Tenants were duly served with the Notice of Hearing documents by registered mail. Despite being served with the Notice of Hearing documents, the Tenants BB and LB did not sign into the teleconference and the Hearing proceeded in their absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

This month to month tenancy began on May 1, 2012. Monthly rent is \$1,100.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$350.00.

The Landlord's agent testified that the Tenants paid only partial rent for June and July, 2012. The Landlord issued a 10 Day Notice to End Tenancy on August 1, 2012 (the "Notice"), for \$1,400.00 in unpaid rent for June and July, 2012. The Landlord's agent testified that the Tenants did not pay any rent for August or September, 2012. The Landlord seeks a monetary award in the amount of **\$3,600.00** representing \$2,500.00 unpaid rent and \$1,100.00 loss of revenue for the month of September, 2012.

The Landlord's agent testified that the Tenants were served with the Notice by handing the Notice to the Tenant BB at the rental unit on August 1, 2012.

The Tenant testified that he had an agreement with the Landlord that the Tenants would not have to pay rent because of the poor condition of the rental unit. He stated that he did not file an Application to dispute the Notice because he believed that the Landlord agreed that they didn't have to pay rent.

### **Analysis**

I accept that the Landlord served the Tenants with the Notice to End Tenancy by personally serving the Tenant BB on August 1, 2012. The Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on August 11, 2012. The Tenants are overholding and I find that the Landlord is entitled to an Order of Possession effective **2 days after service of the Order upon the Tenants.**

I do not accept the Tenant's submission that no rent was owed because the Tenants did not have to pay rent. I find that the Landlord has established a monetary award for unpaid rent in the amount of \$2,500.00 for June, July and August, 2012, and loss of revenue in the amount of \$1,100.00 for September, 2012, in the total amount of **\$3,600.00.**

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the **\$350.00** security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in her application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Unpaid rent and loss of revenue	\$3,600.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$3,650.00
Less security deposit	<u>- \$350.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$3,300.00</b>

### **Conclusion**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$3,300.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 14, 2012.

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Residential Tenancy Branch