



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR; MNR; MNDC; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served each of the Tenants with the Notice of Hearing documents by handing the documents to the Tenants at their home on August 24, 2012.

### **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**

A copy of the tenancy agreement, the Notice to End Tenancy for Unpaid Rent, and the Tenant's ledger were provided in evidence. This tenancy began on October 1, 2010. Monthly rent is currently \$995.00, due on the first day of each month. The Tenants paid a security deposit of \$487.50 on September 27, 2010.

The Landlord served the Tenants with a Notice to End Tenancy for Unpaid Rent on August 2, 2012.

The Tenants agreed that he had not paid rent for August or September, and stated that that he had recently made a token payment of \$70.00 to the Landlord towards unpaid rent.

The Tenants remain in the rental unit. The Tenants have recently come into financial hardship, and are making attempts to pay the outstanding rent and late charges.

The Landlord testified that she is hopeful that the Tenants might be able to pay the amount owing within the next few days, but that she is requesting an Order of

Possession and a Monetary Order in the event that they are not able to do so. The Landlord seeks a Monetary Order, calculated as follows:

Unpaid rent and late fees for August, 2012	\$1,015.00
Unpaid rent and late fees for September, 2012	\$1,015.00
Loss of revenue for October, 2012	\$995.00
Late fees for October, 2012	\$20.00
Less amount recently paid	-\$70.00
Filing fee	<u>\$50.00</u>
TOTAL	\$3,025.00

The Landlord stated that she does not wish to set off the security deposit against the monetary award in case the Tenants are able to pay the amount owing and the tenancy is reinstated.

### **Analysis**

I accept the undisputed evidence that that the Landlord served the Tenants with the Notice to End Tenancy on August 2, 2012. The Tenants did not pay all of 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 12, 2012. I find that the Landlord is entitled to an Order of Possession and I make that Order, effective **2 days after service of the Order upon the Tenants.**

The tenancy agreement allows for late fees in the amount of \$20.00 for unpaid rent. Therefore, based on the testimony of both parties, I find that the Tenants owe the Landlord a total of \$1,015.00 in unpaid rent and late fees for August. The tenancy ended on August 12, 2012, and I find that the Landlord is entitled to loss of revenue for the months of September and October, 2012. However, I dismiss the Landlord's claim for late fees for the months of September and October, 2012, as late fees are for unpaid rent and not for loss of revenue. Therefore, I find that the Landlord has established a monetary award in the amount of **\$2,985.00.**

**The security deposit remains available on application by either party, to be applied in accordance with the provisions of the Act.**

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

**Conclusion**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenants**. This Order 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 **\$3,035.00** against the Tenants. This Order must be served on the Tenants and 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 28, 2012.

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Residential Tenancy Branch