



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that they received a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on their door by Landlord's representative AG at 5:10 p.m. on September 10, 2012. The tenants confirmed that they received copies of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 28, 2012. I am satisfied that the landlord served the above documents and that the parties served one another with their written evidence packages in accordance with the *Act*.

At the commencement of the hearing, Landlord's representative XR (the landlord) testified that the landlord has received all outstanding rent owing for this tenancy. The landlord withdrew the request for a monetary award for unpaid rent, but asked for an Order of Possession and for recovery of the landlord's filing fee. The landlord's application for a monetary award of \$1,080.00 is withdrawn.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to retain a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on December 1, 2008. Monthly rent as of February 1, 2012 was set at \$990.00, payable in advance on the first of each month. The landlord continues to hold a \$475.00 security deposit for this tenancy paid on November 19, 2008.

The landlord gave undisputed oral and written evidence that \$515.00 in rent was unpaid from February 2012 until October 2012. The landlord submitted a rent ledger to demonstrate the amount owing as of these months. Although the tenants paid \$575.00 on September 4, 2012, the landlord identified \$990.00 as still owing for this tenancy in the landlord's 10 Day Notice of September 10, 2012. Within 5 days of being deemed served the 10 Day Notice, the tenants paid \$475.00 on September 17, 2012. The landlord issued a receipt that day for this \$475.00 payment, accepted for use and occupancy only, noting that acceptance of this payment did not continue their tenancy. This still left \$515.00 owing for September 2012. The landlord received another \$1,030.00 towards this tenancy on October 1, 2012, again noting that it was accepted for use and occupancy only. The landlord testified that all rent has now been paid for this tenancy.

### Analysis

The tenants failed to pay all of the \$990.00 identified as then owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenants' payment of \$475.00 on September 17, 2012 did not satisfy the requirement to pay all of the rent then owing within five days as was stated on the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by September 23, 2012. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord's acceptance of payments from the tenants for use and occupancy only has not continued this tenancy.

The landlord asked for an Order of Possession to take effect by the end of November 2012, if the tenants paid all of their November 2012 rent on time. The landlord will be given a formal Order of Possession to take effect by 1:00 p.m. on November 30, 2012, which must be served on the tenants. If the tenants do not vacate the rental unit by the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord's application was successful, I allow the landlord to recover the \$50.00 filing fee from the tenants. I allow the landlord to retain \$50.00 from the tenants' security deposit to implement this monetary finding.

Conclusion

The landlord is provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on November 30, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the amount of \$50.00 to enable the landlord to recover the filing fee for this application. In order to implement this monetary award, I order the landlord to retain \$50.00 from the tenants' security deposit. The revised value of the tenants' security deposit is now set at \$425.00 plus applicable interest.

The remainder of the landlord's application for a monetary award for unpaid rent is withdrawn.

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: October 31, 2012

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Residential Tenancy Branch