



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

One tenant was present at the hearing; she provided affirmed testimony that Notice of the hearing was not received via registered mail. The parties agreed that on October 10, 2012, the tenant's daughter, M.B. was given 3 copies of the landlord's evidence. The tenant then called the Residential Tenancy Branch the day prior to this hearing and was given the conference call dialing instructions.

During the hearing the landlord confirmed that the other 2 tenants were served with Notice of this hearing, sent via registered mail on September 27, 2012. During the hearing the landlord checked the Canada Post web site which showed that notices were initially left for each tenant on September 28, 2012 and that final notices were left on October 4, 2012. Copies of the registered mail receipts and tracking numbers were supplied as evidence.

Therefore, I determined that the tenants were served with Notice of this hearing on the 5<sup>th</sup> day after mailing, in accordance with section 89 of the Act; however 2 of the tenants failed to attend at the hearing. Further, I determined that the tenant present at this hearing was sufficiently served with notice.

The tenant present indicated that the male tenant was with her but that he was not participating in the hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Mutually Settled Agreement

The parties agreed to the following:

- Rent was \$1,280.00 per month up to September 1, 2012;
- The landlord is holding deposits in the sum of \$1,280.00;
- Rent is due on the first day of each month;
- Notice of rent increase was given increasing rent to \$1,335.00 effective October 1, 2012;
- Utilities owed monthly are \$220.00 and annually the landlord will give the tenant notice of actual costs;
- That utility reconciliation last occurred in April 2012 resulting in a payment to the landlord;
- That annually the tenant will pay any amount required to cover 3/7 of the utility bills, or, the landlord will return any overpayment to the tenants; and
- That the tenants currently owe \$2,465.00 rent and \$440.00 utilities.

The parties agreed to the following payment schedule:

Payment	Date to be Paid	Description	Balance
		440.00 utilities September & October	2,905.00
900.00	<b>To be paid immediately</b>		2,005.00
1,555.00	<b>October 22, 2012</b>	October rent owed	450.00
		November rent owed	2,000.00
1,555.00	<b>November 7, 2012</b>	For November rent	445.00
		December rent & utilities owed	2,000.00
1,555.00	<b>November 22</b>	For December rent	445.00
		Filing fee \$50.00	495.00
495.00	<b>By December 7, 2012</b>	Balance of utilities owed plus \$50.00 filing fee	0

The parties agreed that the landlord will be issued a monetary Order in the sum of \$2,905.00 for September and October 2012 rent and utilities owed. The monetary Order will be adjusted by each amount that is paid, as agreed upon in the payment schedule, until the balance is paid in full, at which time the Order becomes unenforceable. The tenant is at liberty to make early payments.

The parties agreed that the landlord is entitled to an Order of possession that is effective 2 days after service to the tenants, should the tenants fail to meet any one of the payments due, as set out in the payment schedule.

The parties also agreed that the Order of possession may be enforced in any month following December, 2012, up to and including June, 2013, inclusive, should the tenants fail to pay rent and utilities owed by the first day of each of those months.

If the tenants make all payments as required, up to June 1, 2013, the Order of possession will no longer be enforceable. Any further non-payment of rent or utilities after June 1, 2013, will require enforcement through the issuing of a new 10 Day Notice to End Tenancy.

Pursuant to section 63(2) of the Act, I Order that the mutual agreement terms are met by parties and that the Orders are enforceable should the agreement fail.

I find, if payment is not made as agreed and the tenancy ends, the landlord will use the deposits to set off any balance owed to the landlord as part of the mutual agreement. Any balance held that exceeds the amount owed by the tenants must be disbursed as provided by the Act. Therefore, if all payments are made up to June 1, 2013, the landlord will continue to hold the total amount of deposits, in trust, until they are disbursed in accordance with the Act. .

This decision must be presented to the Court if enforcement of either Order is required.

### Conclusion

The parties reached a mutually settled agreement.

The landlord has been granted an Order of Possession that is effective 2 days after service. The Order may be served on the day following any failure of payment as set out in the mutually agreed payment schedule. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Order of possession is no longer enforceable if all agreed payments are made up to and including June 1, 2013.

I find that the landlord has established a monetary claim, in the amount of \$2,905.00, which is comprised of unpaid September, and October 2012 rent and utilities. The value of this Order will be reduced as payments are made, as set out in the payment schedule.

In the event that the tenants do not comply with the mutual agreement, the monetary Order may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2012.

---

Residential Tenancy Branch