



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for lost rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlords' agent admitted that the Landlords were already awarded an Order of Possession in previous proceedings heard on July 17, 2012 and as a result, she withdrew the Landlords' application for an Order of Possession in this matter.

The Landlords' agent said he served the Tenants on September 1, 2012 with the Application and Notice of Hearing (the "hearing package") by registered mail. The Landlord's agent said she also spoke to the Tenant, M.C., and advised her about the hearing however she claimed that she would not be participating in it. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient five days later (even if they refuse to pick up the mail). Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for lost rental income?
3. Are the Landlords entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started approximately nine years ago. Rent is \$749.50 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$374.75 at the beginning of the tenancy.

The Landlords' agent said the Tenants have not paid rent for August, September or October 2012.

### Analysis

In the absence of any evidence from the Tenants to the contrary, I find that the Landlords are entitled to recover the unpaid rent for August 2012 of \$749.50, for September 2012 of \$749.50 and for the period, October 1 – 2, 2012, in the pro-rated amount of \$48.35. I also find that the Landlord is entitled to recover lost rental income for the period, October 3 – 14, 2012, in the pro-rated amount of \$290.13 as I find it unlikely that the Landlords will be able to re-rent the rental unit before October 15, 2012. Given that s. 7(2) of the Act requires the Landlords to mitigate their damages by taking reasonable steps to re-rent the rental unit as soon as possible, I make no order at this time for lost compensation for the period, October 15 – 31, 2012, however, I grant the Landlords leave to reapply for it if they incur losses for that period.

As the Landlords have been successful in this matter, I find pursuant to s. 72(1) of the Act that they are entitled to recover from the Tenants the \$50.00 filing fee for this proceeding for a total monetary award of \$1,887.48. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$374.75 plus accrued interest of \$13.25 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$1,499.48.

### Conclusion

The Landlords' application for an Order of Possession is withdrawn. A Monetary Order in the amount of \$1,499.48 has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: October 02, 2012.

---

Residential Tenancy Branch