



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only.

The landlord testified and provided documentary evidence to confirm the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 17, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenants on the 5<sup>th</sup> day after it was mailed.

Based on the testimony and documentary evidence of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; for cause; or for breach of an agreement; to a monetary order for unpaid rent; for all or part of the security deposit; for damage to the rental unit; for compensation for damage or losses; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on December 1, 2011 for a 1 year fixed term tenancy beginning on December 1, 2011 for a monthly rent of \$1,550.00 due on the 1<sup>st</sup> of each month with a security deposit of \$775.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on August 24, 2012 with an effective vacancy date of September 25, 2012 citing the tenants are repeatedly late paying rent and have allowed an unreasonable number of occupants in the property;

- Copies of three different 10 Day Notices to End Tenancy for Unpaid Rent issued in the months of February, March and June 2012. The landlord has also provided Proof of Service documents for four different 10 Day Notices to End Tenancy for Unpaid Rent for service of these documents on February 16, 2012; March 3, 2012; June 2, 2012; and August 3, 2012. A copy of a 10 Day Notice to End Tenancy for Unpaid Rent for August 2012 was not submitted into evidence;
- An unreadable copy of a Statement of Account from the landlord's strata property management services; and
- A portion of a document that appears to be a "Notice of Infraction" for the rental unit indicating that on August 22, 2012 at 6:11 p.m. the resident of this rental unit disposed of a wooden computer and a red table top in the garbage room. The Notice also states the landlord had been warned about a previous contravention on January 9, 2012 and was fined for a second contravention on February 22, 2012.

The landlord's agent testified the total rental arrears and strata fees and fines totaled \$3,230.00 but that the tenants have recently provided payment of \$2,100.00 leaving a balance of \$1,130.00.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) There are an unreasonable number of occupants in a rental unit;

Section 47(4) goes on to say that within 10 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution.

And Section 47(5) states that if a tenant who receives a notice under Section 47 does file an application for dispute resolution within 10 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenant's have not applied to dispute the landlord's 1 Month Notice to End Tenancy for Cause, I find the tenants are conclusively presumed to have accepted the end of the tenancy.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the undisputed testimony of the landlord's agent, I find the landlord has established that she has suffered a loss as a result of a violation of the tenancy agreement for the non-payment of rent and strata fees and fines and is entitled to compensation as outlined in her evidence and testimony.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,180.00** comprised of rent and fines owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$775.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$405.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 18, 2012.

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Residential Tenancy Branch