



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR MNR MNDC

For the tenants: CNR

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenants applied to cancel a Notice to End Tenancy for Cause for Unpaid Rent or Utilities.

Two agents for the landlord (the “agents”) attended the hearing. The hearing process was explained to the agents and an opportunity was given to ask questions about the hearing process. Thereafter the agents gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The agents stated that the tenants served the landlord with a Notice of a Dispute Resolution Hearing, however did not serve evidence.

The tenants did not attend the hearing. As a result, **I dismiss** the tenants’ application in full **without leave to reapply**.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the start of the hearing, the agents stated that the tenants continue to occupy the rental unit and have also failed to pay rent in the amount of \$1,200.00 for October 2012. As their application was made in September, 2012, the landlord is also seeking unpaid rent for October 2012, for a total monetary claim of \$2,400.00. The agents made a verbal request for recovery of the \$50.00 filing fee during the hearing.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent or utilities or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

A copy of a fixed term tenancy agreement was submitted as evidence. The fixed term tenancy began on July 7, 2012 and is set to expire on June 31, 2013. Monthly rent, in the amount of \$1,200.00 is due on the first day of each month. A security deposit of \$600.00 was paid by the tenants at the start of the tenancy.

Based on the undisputed testimony of the agents, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated September 7, 2012 and with an effective date of September 17, 2012. The Notice stated that the tenants failed to pay \$1,200.00 due September 1, 2012. The tenants applied to dispute the Notice, however failed to attend today's hearing and their application was dismissed without leave to reapply as a result.

The agents are seeking an order of possession as the tenants continue to occupy the rental unit. The agents are also seeking unpaid rent for October 2012 rent in the amount of \$1,200.00 which was not paid since filing their application for a total monetary claim of \$2,400.00 comprised of \$1,200.00 for unpaid rent for September and October 2012.

### Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

**Order of Possession** – As the tenants did not attend today's hearing, their application to cancel the Notice was dismissed without leave to reapply. Pursuant to section 55 of the *Act*, when a tenant applies to dispute a Notice and the tenant's application is dismissed **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

within 5 days after receiving the Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the effective date of the Notice. Accordingly, **I grant** the landlord an order of possession.

**Landlord's claim for unpaid** – A fixed term tenancy began on July 7, 2012 and was to expire on June 31, 2013. Monthly rent in the amount of \$1,200.00 is due on the first day of each month. The tenants failed to pay rent for September and October 2012. Section 26 of the *Act* requires that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, **I find** the tenants breached section 26 of the *Act* and **I find** that the tenants owe rent in the amount of \$2,400.00 for the months of September and October 2012.

Given the above, **I find** the landlord has established a monetary claim in the amount of \$2,400.00. **I find** the landlord's application did have merit. Therefore, **I grant** the landlord recovery of the filing fee in the amount of **\$50.00**.

The tenants' security deposit of \$600.00 has accrued no interest since July 2012, which the landlord continues to hold.

**I find** that the landlord has established a total monetary claim of **\$2,450.00** consisting of \$2,400.00 in unpaid rent and the \$50.00 filing fee. **I authorize** the landlord to retain the full security deposit of \$600.00 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$1,850.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I dismiss the tenants' application in full without leave to reapply as the tenants did not attend the hearing.

I find the landlord has established a total monetary claim of \$2,450.00. I authorize the landlord to retain the full security deposit of \$600.00 in partial satisfaction of the claim, and I grant the landlord a monetary order for the balance owing in the amount of \$1,850.00.

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