



# 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 their 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' agent (the agent) confirmed that she and her mother received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to them on September 12, 2012. The agent also confirmed that both her mother and father received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 13, 2012. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

### Issues to be Decided

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

### Background and Evidence

This periodic tenancy commenced by way of an oral agreement between the then landlord and the tenants in June 1994. The parties agreed that the current monthly rent is set at \$907.93. The landlord maintained that monthly rent is payable in advance on the first of each month. The agent and tenant testified that monthly rent is payable in advance on the 15<sup>th</sup> of each month. Both parties provided evidence to support their claims that the rent was due on the day of the month they identified.

The landlord issued a first 10 Day Notice on August 3, 2012 seeking \$928.93 in monthly rent (including a \$25.00 late fee) owing for August 2012. The second 10 Day Notice, the one that gave rise to this application for dispute resolution, issued on September 12, 2012, was for \$929.93 in rent (including a \$25.00 late fee) that the landlord claimed was owing as of September 1, 2012. Whether or not monthly rent was due on the 1<sup>st</sup> or the 15<sup>th</sup> of the month, the agent confirmed that no negotiable rent payment for September 2012 was provided to the landlord until September 26, 2012. This was well after the 5-day period for paying the rent identified as owing in the landlord's 10 Day Notice of September 12, 2012.

The landlord testified that payments of \$928.92 were made and accepted for September and October 2012 for use and occupancy only. The landlord entered into written evidence a copy of a September 24, 2012 letter advising the male tenant that the tenants' late rent would only be accepted for occupancy only and not to reinstate this tenancy. The parties agreed that the only amount owing at this time was the tenants' November 2012 rent payment, which the agent said would be paid to the landlord later on the day of this hearing when the tenants considered this payment due.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to settle the matters currently under dispute in this tenancy under the following terms:

1. Both parties agreed that this tenancy will end by December 31, 2012, by which time the tenants will have vacated the rental unit.
2. The female tenant agreed on behalf of the tenants to pay the November 2012 rent of \$907.93 by 5:00 p.m. on November 15, 2012.
3. Both parties agreed that they will sign a Mutual End to Tenancy agreement to end this tenancy by December 15, 2012, if the tenants pay the landlords \$453.97, representing one-half month's rent, by 5:00 p.m. on December 1, 2012.
4. Both parties agreed that this tenancy will end by December 31, 2012, if the tenants pay the landlords \$907.93 by 5:00 p.m. on December 1, 2012.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues currently under dispute regarding this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenants do not vacate the rental premises in accordance with their agreement. 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.

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: November 15, 2012

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Residential Tenancy Branch

