



# 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 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 the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on October 26, 2012, each tenant was served copies of the Application for Dispute Resolution and Notice of Hearing via registered mail to the rental unit address. A copy of the Canada Post receipts and tracking numbers were supplied as evidence.

The tenants were last seen at the rental unit toward the end of October. The landlord had issued a notice of entry and when they accessed the unit on October 9, 2012, it was apparent that the tenants continued to reside in the unit. Throughout the tenancy the tenants have come and gone from the unit.

During the hearing the landlord checked the Canada Post tracking web site and established that neither of the tenants had retrieved their registered mail packages.

As the tenants continue to possess the unit I find that the hearing documents are deemed to have been served in accordance with section 89 and 90 of the Act. Registered mail is considered to have been given on the 5<sup>th</sup> day after mailing. A failure to retrieve registered mail does not allow a party to avoid service. Even though the tenants are deemed to have been served with Notice of the hearing, neither attended the hearing.

On November 20, 2012, the landlord left 2 evidence packages in the tenant's mail box at the rental unit.

### Preliminary Matters

The monetary portion of the application indicated a claim in the sum of \$3,950.00. A notation was made that showed a total claim of \$4,450.00; less the deposit.

The landlord was informed that the total claim would be \$4,450.00 and that if the claim succeeded the \$550.00 security deposit would then be deducted.

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 from August to November, 2012 inclusive?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The 6 month fixed-term tenancy commenced on May 1, 2012, rent is \$1,100.00 per month; a deposit in the sum of \$550.00 was paid on the first day of the tenancy. The tenancy was to continue on a month-to-month basis.

The landlord provided copies of the following documents:

- A 10 Day Notice to End Tenancy issued on August 28, 2012;
- The signed tenancy agreement;
- Bank statements reflecting August and September 2012 returned cheques in the sum of \$1,100.00 each; and
- A copy of the dishonoured September 1, 2012 rent cheque.

The landlord stated that on August 28, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 7, 2012 was served by posting to the tenant's door. The Notice was posted during the morning and within 1 week it had been removed from the door of the rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,100.00 for August 2012 rent within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord had 2 cheques for rent; for August and September, 2012. Both of these cheques were returned by the bank as NSF. The tenants did not pay October or November rent. The landlord has claimed compensation for each month; totalling \$4,400.00.

The landlord has not seen the tenants are the unit for the past 4 or 5 weeks, but said that is not uncommon, that throughout the tenancy the tenants would come and go. When the landlord looks through the windows, they can see a bed, shoes, furniture and other belongings, which led the landlord to conclude that the tenants have yet to vacate the unit.

In October 2012 the landlord had a hearing to request an Order of possession and compensation for unpaid rent. The landlord could not prove service of the hearing package, as he failed to supply evidence of registered mail; they were given leave to reapply. The failure to submit the required evidence resulted in a delay in enforcing the Notice.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on August 31, 2012.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on August 31, 2012, I find that the earliest effective date of the Notice was September 10, 2012.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 10, 2012.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on September 10, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

I find, based on the affirmed testimony of the landlord that the tenants have continued to possess the rental unit. They were last seen at the rental unit 4 or 5 weeks ago, but I have accepted the landlord's testimony that absences have not been unusual; that the landlord could not assume the tenants had abandoned the unit and that an Order of possession was required to ensure legal possession for the landlord. The tenants

remained in the rental unit well beyond the effective date of the Notice, which supports the landlord's submission that the tenants have not abandoned the unit.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$4,400.00 for August to November 2012, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$550.00, in partial satisfaction of the monetary claim.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,900.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord has been granted an Order of Possession.

The landlord has been granted a monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit.

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: November 28, 2012.

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Residential Tenancy Branch