



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD MNDC FF  
                                 MNDC MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the return of their security deposit, and to recover the cost of the filing fee from the Landlords.

The Landlords affirmed that each Tenant was served with the Notice of Dispute Resolution hearing documents by registered mail on November 21, 2012. Canada Post receipts were provided in the Landlords' evidence along with a copy of the Canada Post tracking information which indicates the Tenants signed for the hearing documents on November 21, 2012. Based on the aforementioned, I find the Tenants were sufficiently served notice of this proceeding, in accordance with the *Act*.

The Landlords confirmed receipt of the Tenants' application for dispute resolution and late evidence which was received on approximately Monday, December 3, 2012.

No one appeared at the teleconference hearing on behalf of the Tenants, despite this hearing being convened to hear matters pertaining to their own application and despite them being served notice of the Landlords' application; therefore, I continued in the absence of the Tenants.

### Issue(s) to be Decided

1. Should the Landlords be awarded an Order of Possession?

2. Should the Landlords be issued a Monetary Order?
3. Should the Tenants' application be dismissed with or without leave to reapply?

### Background and Evidence

The Landlords affirmed that they entered into a month to month tenancy with the Tenants which began on August 1, 2012. Rent is payable on the first of each month in the amount of \$1,500.00 and on August 1, 2012 the Tenants paid \$750.00 as the security deposit. A move in condition inspection report form was completed on August 1, 2012.

The Landlords explained that when the Tenants failed to pay their October and November 2012 rent they issued a 10 Day Notice to end tenancy for unpaid rent dated November 2, 2012. They hired a bailiff who personally served the Tenants with the 10 Day Notice on November 2, 2012, as indicated in the Bailiffs' written affidavit that was provided in their evidence.

The Landlords advised that no rent has been paid for October, November and now December 2012 so they are seeking a monetary order for all three months as well as an Order of Possession.

The Landlords submitted documentary evidence in support of their claim which included, among other things, copies of: a 10 Day Notice issued November 2, 2012; the bailiffs' affidavit of service; Canada Post receipts and tracking information; their written statement, and receipts for materials and work performed on the rental property.

The Tenants submitted their written statement, a diagram of the layout of the property, and photocopied or faxed photos which were not legible. There was no additional evidence or testimony provided in support of the Tenants' claim as no one attended on behalf of the Tenants.

### Analysis

Given the evidence before me, in the absence of any testimony from the Tenants, who did not appear despite this hearing being convened to hear matters pertaining to their own application, and despite them being properly served with notice of the Landlord's hearing documents, I accept the version of events as discussed by the Landlords and corroborated by their evidence.

**Order of Possession** - I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*. The Tenants received the 10 Day Notice November 2, 2012. The Tenants failed to make application to dispute the Notice and did not pay the rent within 5 days after receiving this notice. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, **November 12, 2012** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlords' request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$3,000.00 which includes \$1,500.00 for October 2012 and \$1,500.00 for November 2012; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenants have failed to comply with a standard term of the tenancy which stipulates that rent is due monthly on the first of each month. I find the Landlords have met the burden of proof and I award them a monetary claim of **\$3, 000.00** for October and November 2012 unpaid rent.

**Loss of revenue** – As noted above this tenancy ended **November 12, 2012** in accordance with the 10 Day Notice which resulted from the Tenants breach. Therefore, as the Tenants remain in the rental unit, I find the Landlords are seeking use and occupancy or loss of rent for December 2012, not unpaid rent. When considering today's date is December 7, 2012; the Landlords will not regain possession of the unit until after service of the Order of Possession; and, they will have to spend time to acquire new tenants, I find the Landlords will lose the rental revenue for December 2012.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$1,500.00** for loss of revenue for December 2012.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent for October & November 2012	\$3,000.00
Loss of revenue for December 2012	1,500.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$4,550.00</b>
<b>LESS:</b> Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
<b>Offset amount due to the Landlords</b>	<b><u>\$3,800.00</u></b>

### **Tenants' application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

While the Landlords attended the hearing by way of conference call, the Applicant Tenants did not.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time. Accordingly, I dismiss the Tenants' application, without leave to reapply.

### Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlords have been awarded a Monetary Order in the amount of **\$3,800.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I HEREBY DISMISS the Tenants' application, without leave to reapply.

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: December 07, 2012.

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Residential Tenancy Branch