



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

At the start of the hearing the Landlord said they had changed the application on the advice of a Residential Tenancy Branch employee, but what is written in the comment section of the application is what they want to apply for. The Landlord said he is applying for unpaid rent, to retain the security deposit and for an Order of Possession. I accept the amendments to the application which were explained at the Hearing and are written in the comment section of the Landlord's application.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 7, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on May 19, 2012 as a fixed term tenancy with an expiry date of June 30, 2013. Rent is \$1,250.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$625.00 on May 19, 2012 and although a pet deposit of \$250.00 was agreed to it was not paid.

The Landlord said he issued a 1 Month Notice to End the Tenancy for Cause dated November 11, 2012 with an effective vacancy date of January 31, 2013. The reasons on the Notice are for significantly disturbing another tenant and for breach of a material term of the tenancy agreement. The Landlord said the Tenants did not pay the pet deposit and their dog is barking which disturbs the tenant in the lower unit. The

Landlord said he has sent 3 to 4 text messages to the Tenants and met with them about the dog issues and the Tenants have not corrected the situation. The Landlord said the Tenants have done nothing to mitigate the problems with their dog. The Landlord continued to say clause 10 of the addendum to the tenancy agreement says the dog is not to disturb the lower tenant and it has so the Tenants are in a material breach of the tenancy agreement.

As well the Landlord said that the Tenant did not pay \$1,250.00 of rent for each month of December, 2012 and for January, 2013 when it was due and as a result, on January 6, 2013 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2013 to the Tenants. The Landlord said the Tenants have made payments totaling \$1,250.00 in January, 2013, but they are still in rent arrears in the amount of \$1,250.00. The Landlord said the payments made were receipted as for "Use and Occupancy Only". The Landlord said he wants to end the tenancy as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Landlord closed his testimony by saying he is applying for \$1,250.00 in unpaid rent, an Order of Possession for as soon as possible to recover the filing fee of \$50.00 and to retain the Tenants' security deposit of \$625.00.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the same day it is personally delivered, or on January 6, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 11, 2013.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent for January, 2013 in the amount of \$1,250.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,250.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,300.00
Less:	Security Deposit	\$625.00	
	Subtotal:		\$ 625.00
	Balance Owing		\$ 675.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$675.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: January 30, 2013

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Residential Tenancy Branch

