



# 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 for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants' security deposit and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on June 1, 2011, current monthly rent is \$920.00, the parking fee is \$20.00 and a security deposit of \$450.00 was paid by the tenants at the beginning of the tenancy. I note that the tenancy agreement states the parking fee is \$15.00.

The landlord gave evidence that on December 2, 2012, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenants' door, listing unpaid rent of \$2140.00 as of December 1, 2012. The effective vacancy date listed on the Notice was December 13, 2013.

Section 90 of the Act states that documents served by posting them on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on December 5, 2012, and the effective move out date is automatically changed to December 15, 2012.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlord stated that the tenants have not made any payments of rent or offered to make any payments, and as of the date of the hearing, the tenants owed \$3050.00 in unpaid rent. I note that the landlord has included the parking fee as part of unpaid rent.

The female tenant stated that she immediately called the landlord upon receipt of the Notice to explain that she was unaware that her November rent cheque had not cleared her account until late November and further asked the landlord if she could arrange to make payments.

The tenant stated that the landlord told her that it was alright to make late payments due to her financial hardship and that fact it was necessary to seek income assistance payments.

The male tenant said that he spoke with the landlord on a Friday to inform her that he could pay rent on the Monday; however the landlord subsequently refused payment, saying that she wanted the tenants to vacate.

The tenant also said that another reason the rent was late was due to the male tenant's bank account being frozen.

The female tenant said that there was a history of the landlord working with them on late payments of rent, and that in this particular instance, the landlord refused the payments of rent that they offered.

The female tenant said that by the time she realized the landlord would not accept payments despite her assurance to the contrary, it was too late to file an application for dispute resolution seeking cancellation of the Notice.

In response, the landlord denied refusing rent payments and that the tenants kept phoning to say they would pay, but did not.

### Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent listed on the Notice or apply to dispute the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I reject the arguments of the tenants that they offered to pay rent and the landlord refused to accept the payments as there is no independent proof of these statements, only the disputed verbal testimony of the parties. I do not find disputed verbal testimony, without separate confirmation meets the burden of proof.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

As the tenants did not file an application for dispute resolution in dispute of the amount listed on the Notice, \$2140.00, and failed to pay total rent of \$940.00 for January 2013, I find that the landlord has established a total monetary claim of \$3130.00 comprised of outstanding rent and parking fees of \$3080.00.00 through January, 2013, and the \$50.00 filing fee paid by the landlord for this application.

### Conclusion

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$450.00 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$2680.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

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* and is being mailed to both the applicant and the respondent.

Dated: January 18, 2013

