



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

### Introduction

This application was brought by the landlords on December 17, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on December 2, 2012. The landlords also sought a monetary award for unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) of the Act to permit the landlords to amend their application to request recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing on December 19, 2012, the tenants did not call in to the number provided to enable their participation in the telephone conference call proceeding. Therefore, it proceeded in their absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlords are entitled to an Order of Possession and a Monetary Order as requested.

### Background and Evidence

This tenancy began on April 1, 2010. Rent is \$1,000 per month and the landlords hold a security deposit of \$500 paid at the beginning of the tenancy.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of December 2, 2012 had been served when the tenants had a rent short fall of \$100 from August 2012, a shortfall of \$300 from September 2012 and have paid no rent since the partial payments of those two months.

The landlords stated that the tenants remained in the rental unit at the time of the hearing and requested an Order of Possession and the monetary award for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the amount owed.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was December 15, 2012. (As the notice to end was served by posting, it is deemed under section 90 of the *Act* to have been received three days later with an effective date 10 days later.)

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenants.

In the absence of any evidence to the contrary, I accept the evidence of the landlords that the tenants have not paid the rent as claimed.

As the application has succeeded on its merits, I find that the landlords are entitled to recover the filing fee for this proceeding from the tenants.

In addition, as authorized under section 72 of the *Act*, I find that the landlords may retain the security deposit in set off.

Thus, I find that the landlords are entitled to a monetary award calculated as follows:

Rent shortfall for August 2012	\$ 100.00
Rent shortfall for September 2012	300.00
Rent for October 2012	1,000.00
Rent for November 2012	1,000.00
Rent for December 2012	1,000.00
Rent for January 2013	1,000.00
Filing fee	50.00
Sub total	\$4,450.00
Less retained security deposit (no interest due)	- 500.00
<b>TOTAL</b>	<b>\$3,950.00</b>

### Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$3,950.00** for service on the tenants.

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 18, 2013

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Residential Tenancy Branch

