



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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 and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and to recover the filing fee.

The landlord appeared; the tenants did not appear.

The landlord gave evidence that each tenant was served separately with the Application for Dispute Resolution and Notice of Hearing by registered mail on January 30, 2013. The landlord provided the receipts and tracking number of the registered mail.

I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); 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 and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on November 1, 2012, monthly rent is \$900.00, with a rental incentive of \$150.00, making the tenants' rent obligation the

amount of \$750.00, and a security deposit of \$450.00 was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on January 9, 2013, 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 \$865.00 as of January 1, 2013. The effective vacancy date listed on the Notice was January 19, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on January 22, 2013, and the effective move out date is automatically changed to February 1, 2013, pursuant to section 53 of the Act.

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 made some payments toward the balance of unpaid rent, and as of the date of the hearing, the tenants owed \$895.08.00 in unpaid rent.

The landlord said that upon each of the 5 payments made by the tenants, a receipt for use and occupancy was issued. Additionally, the landlord said she spoke with the tenants on February 19, 2013, when they made their last payment, that the hearing for dispute resolution was still going forward.

I have no evidence before me that the tenant applied to dispute the Notice.

### 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 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 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.

I also find that the landlord has established a total monetary claim of \$945.08 comprised of outstanding rent of \$895.08.00 through February, 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 for the rental unit, which is enclosed with the landlord's Decision. Should the tenants 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. Costs of such enforcement may be recovered from the tenants.

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 \$495.08, 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. Costs of such enforcement may be recovered from 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* and is being mailed to both the applicant and the respondents.

Dated: February 22, 2013

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Residential Tenancy Branch

