



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and breach of a material term of the residential tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:12 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she witnessed her co-worker post a 10 Day Notice to End Tenancy (the 10 Day Notice) on the tenants' door at 2:53 p.m. on January 17, 2013. The landlord entered into written evidence a signed Proof of Service document attesting to this posting of the 10 Day Notice on the tenants' door. The landlord testified that she mailed an amended copy of the landlord's dispute resolution hearing package to both tenants by registered mail on February 5, 2013. She confirmed that the amendment added the male tenant, one of the original signatories to the residential tenancy agreement for this tenancy to the landlord's application. She provided the Canada Post Tracking Numbers confirming both registered mailings. She also testified that the female tenant received, opened and then returned her copy of the dispute resolution hearing package to the landlord. She said that thus far the landlord has not received any returned hearing package from the male tenant. I am satisfied that the tenants were served with these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on May 3, 2012, and is scheduled to end by May 31, 2013. Monthly rent is set at \$1,350.00, payable in advance on the first of each month, plus hydro. The landlord continues to hold the tenants' \$675.00 security deposit.

The landlord's application for a monetary award of \$2,973.60, included the following items:

<b>Item</b>	<b>Amount</b>
Unpaid January 2013 Rent	\$1,350.00
January 2013 NSF Cheque Fee and Late Fee	50.00
Unpaid February 2013 Rent	1,350.00
February 2013 NSF Cheque Fee and Late Fee	50.00
Damage to Parking Garage Gate	173.60
<b>Total Monetary Order Requested</b>	<b>\$2,973.60</b>

The landlord testified that the tenants have not made any further payments to the landlords since the landlord issued the 10 Day Notice.

Analysis

The tenants failed to pay the full amount of rent identified as outstanding in the 10 Day Notice within five days of receiving that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by January 30, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be

served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed oral testimony and written evidence submitted by the landlord, I find that the landlords are entitled to recover the unpaid rent owing from January and February 2013, plus the late fees and NSF cheque fees, as set out in the signed residential tenancy agreement between the parties. I also find that the landlord has submitted undisputed evidence with respect to the \$173.60 charge imposed by the strata corporation against the owners of this rental unit for damage caused to the parking gate that occurred as a result of actions taken by a guest of the female tenant's who was accessing the parking garage using the tenant's parking fob. I also issue a monetary award of \$173.60 to recover the landlord's losses arising out of this incident.

I allow the landlord to recover the tenants' security deposit, plus applicable interest, to partially satisfy this monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the filing fee for this application from the tenants.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of the Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy and the filing fee, and to retain the tenants' security deposit:

Item	Amount
Unpaid January 2013 Rent	\$1,350.00
January 2013 NSF Cheque Fee and Late Fee	50.00
Unpaid February 2013 Rent	1,350.00
February 2013 NSF Cheque Fee and Late Fee	50.00
Damage to Parking Garage Gate	173.60
Less Security Deposit	-675.00
Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,348.60</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy as soon as possible. Should the tenant(s) fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.

Dated: February 27, 2013

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Residential Tenancy Branch

