



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

### Introduction

This application was brought by the landlord on January 14, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on January 3, 2013. The landlord also sought a monetary award for unpaid rent, loss of rent, 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 sent by registered mail on January 16, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and monetary award as requested.

### Background and Evidence

This tenancy began on September 1, 2012. Rent is \$1,400 per month and the landlord holds a security deposit of \$700 paid on August 31, 2012.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of January 3, 2013 had been served when the tenants had a rent shortfall of \$700 in December 2012 and had paid none of the rent due on January 1, 2012.

In the interim, the tenants remain in the rental unit and, in addition, to the December 2012 and January 2013 arrears, they have now not paid the rent due on February 1, 2012.

Therefore, the landlord requests an Order of Possession to take effect two days from service and a monetary award for the unpaid rent and loss of rent for February 2013.

### 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 tenant 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, in the absence of any evidence to the contrary, 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 January 13, 2013.

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

I further find that the landlord is entitled to a Monetary Order for the rent shortfall for December 2012, rent for January 2013 and unpaid rent and loss of rent for February 2013.

Thus, I find that, at present, the tenants owe to the landlord an amount calculated as follows:

Rent shortfall for December 2012	\$ 700.00
Rent for January 2013	1,400.00
Rent and loss of rent for February 2013	1,400.00
Filing fee	<u>50.00</u>
Sub total	\$3,550.00
Less retained security deposit (No interest due)	<u>- 700.00</u>
<b>TOTAL</b>	<b>\$2,850.00</b>

### Conclusion

The landlord's 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 landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,850.00**, enforceable through the Provincial Court of British Columbia, 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: February 07, 2013

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Residential Tenancy Branch

