



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation  
and [tenant name suppressed to protect privacy]

## **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.

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

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.

*Preliminary issue*-The hearing was originally convened on March 13, 2013, and testimony was taken; however the tenant said that she faxed in her evidence showing that she had paid rent to the Residential Tenancy Branch ("RTB") and had the proof it was received by the RTB. The tenant also said that her evidence was sent to the landlord by courier.

The tenants' evidence was not in the hearing file or uploaded to the RTB system. As well, the landlord said that they had not received the tenants' evidence.

I allowed an adjournment of the hearing for a week with the understanding that the tenant would fax her evidence to the number I provided her in the hearing.

At the reconvened hearing, when questioned, the tenant said that she had not sent in her evidence as she has been in the hospital.

The hearing continued without the tenants' documentary evidence.

The tenant raised no issue regarding the landlord's submission of evidence.

*Preliminary issue #2*-The parties have been in dispute resolution on previous occasions regarding the same issues; however there has been no final disposition of the issues.

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 undisputed evidence shows that this tenancy began on June 1, 2012, monthly rent is \$1015.00, and a security deposit of \$507.50 was paid by the tenants at the beginning of the tenancy on or about May 4, 2012.

The landlord gave evidence that on February 7, 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 \$4084.00 as of February 1, 2013. The effective vacancy date listed on the Notice was February 17, 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 February 10, 2013, and the effective move out date is automatically changed to February 20, 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 no further payments of rent since issuance of the Notice, and as of the date of the hearing, the tenants owed \$5074.00 in unpaid rent through March 2013.

The landlord's relevant evidence included tenant ledger sheets, accounting records, the Notice, the tenancy agreement, and banking records.

The tenant denied owing this amount of rent and had the proof of payments; however as stated earlier, the tenant did not supply this proof.

The tenant also stated that they were in the process of packing and would be vacating the rental unit as they were tired of fighting the landlord by continually having to produce payment records.

There is no evidence that the tenants disputed 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 through their oral and written evidence and the lack of tenants' evidence a total monetary claim of \$5124.00 comprised of outstanding unpaid rent of \$5074.00 through March 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 recoverable from the tenants.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$507.50 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 \$4616.50, which I have enclosed with the landlord's Decision.

Should the tenants 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 recoverable 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 respondent.

Dated: March 21, 2013

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Residential Tenancy Branch

