



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and/or loss of rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I amended the application to correct the spelling of the female tenant's name.

The landlord requested the monetary claim be amended to include loss of rent for March 2013 as the tenants continue to occupy the rental unit. I granted the landlord's request for amendment as the tenants were provided the opportunity to respond to the landlord's claim for loss of rent for March 2013.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to unpaid and/or loss of rent in the amount claimed?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced August 1, 2011 and the tenants paid a security deposit of \$382.50. The tenants were required to pay rent of \$765.00 on the 1<sup>st</sup> day of every month. Starting November 1, 2012 the rent increased to \$790.00 per month.

The landlord submitted a ledger showing the following: In June 2012 the tenants failed to pay \$365.00 of the rent owed. The tenants started making partial payments of \$20.00 per month toward the arrears. Then in October 2012 the tenants wrote two cheques to the landlord, one of which was returned. The tenants did not pay rent for November 2012 or December 2012 when due but a payment of \$790.00 was made December 11, 2012. The tenants did not pay rent of for January 2013 or February 2013. The landlord also submitted that the tenants have not paid any monies for March 2013.

The tenants testified that they have been unable to pay rent because they lost their jobs with the female tenant losing her job in November 2012 and the male tenant losing his job in December 2012. Both claimed they remain unemployed. The tenants claimed they have requested the ability to enter into a payment plan but that the landlord has not responded to such requests.

The landlord provided a copy a 10 Day notice to End Tenancy for Unpaid (the Notice) dated January 11, 2013 which indicates it was served in person. In filing this application, the landlord indicated that the Notice was served in person on January 11, 2013. The Notice indicates the tenants owed \$1,885.00 as of January 1, 2013 and has a stated effective date of January 21, 2013.

The landlord's caretaker testified that he gave the Notice to the female tenant at the door of the rental unit on January 11, 2013. The female denied receiving the Notice and that the caretaker could not have served her that date as she was out of town on January 11, 2013. The female tenant indicated that the person she went out of town with could corroborate that the tenant was with him, in another town, on January 11, 2013. I did not ask the tenant to call this person as a witness; however, shortly after making this statement the female tenant was heard on another phone line talking to someone. The tenants stated that the female tenant was talking to her boss. The landlord pointed out that the tenant had testified earlier that she was unemployed.

The landlord submitted that, in the alternative, the tenants acknowledged receiving a copy of the 10 Day Notice with the landlord's evidence package on February 25, 2013 and since they have not paid the arrears indicated on the 10 Day Notice and more than 10 days have passed the tenancy has ended in any event.

The landlord requested an Order of Possession as soon as possible. The tenants requested they be provided more time to vacate as they did not have the funds to move to another rental unit. The landlord was not agreeable to the tenants' request given the number of months the landlord has suffered a loss of rent.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice or 10 days after receiving it.

At issue is whether the tenants were served with a 10 Day Notice. The landlord's caretaker testified the female tenant was served in person on January 11, 2013 and the female tenant denied that. However, during the hearing I found the female tenant's submissions inconsistent with respect to her employment status and I found her credibility seriously compromised. Further, the tenants had not provided any evidence prior to the hearing that would corroborate that the tenant travelling out of town on January 11, 2013 despite the Application for Dispute Resolution indicates that service occurred in person on that date. Therefore, I accept, on the balance of probabilities, the landlord's submissions as to service of the 10 Day Notice upon the female tenant on January 11, 2013.

Since the tenants have not filed to dispute the Notice or pay the rent outstanding and more than five days passed since receiving the Notice, I find the tenancy has ended and the landlord is entitled to an Order of Possession as requested. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Based upon the ledger for the period of June 2012 through February 2013 I find the landlord entitled to unpaid rent and loss of rent of \$2,655.00. I have not awarded the NSF charge of \$20.00 as the landlord did not produce a tenancy agreement that provides for such a charge. As the tenants continue to occupy the rental unit I further award the landlord loss of rent for one-half of March 2013. The landlord is at liberty to file a future Application for Dispute Resolution if the landlord incurs a loss of rent for the period after March 15, 2013 despite the landlord's efforts to re-rent the unit.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid/loss of rent to February 2013: per ledger	\$ 2,655.00
Loss of rent: March 1 – 15, 2013	395.00
Filing fee	50.00
Less: security deposit	<u>(382.50)</u>
Monetary Order	\$ 2,717.50

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$2,717.50 to serve upon 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: March 07, 2013

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Residential Tenancy Branch

