



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 tenant's security deposit and to recover the filing fee.

The landlord and the male tenant appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

As to the female tenant, the landlord gave evidence that he served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on March 15, 2013. The landlord supplied the registered mail receipts showing the tracking number of each registered mail envelope.

I find the tenants each 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 female tenant's absence and with the male tenant in attendance.

At the outset of the hearing, neither party raised any issue regarding service of the evidence or application.

Thereafter each party was provided the opportunity to present their 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 tenancy agreement, signed by both tenants, shows that this one year, fixed term tenancy agreement commenced on January 10, 2013, was to end on December 30, 2013, monthly rent is \$1800.00, due on the last day of the month, and the tenants paid a security deposit of \$900.00.

The landlord gave evidence that on March 1, 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 \$400.00 as of February 28, 2013. The effective vacancy date listed on the Notice was March 11, 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 March 4, 2013, and the effective move out date is automatically changed to March 14, 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 not made any payment rent since the Notice was issued and as of the day of the hearing owed, the tenants owed \$2200.00 in unpaid rent.

Of note, the landlord's monetary claim is in the amount of \$3100.00, for unpaid rent of \$2200.00 and the security deposit of \$900.00. The only explanation provided by the landlord was that the tenants are in breach of the fixed term and therefore he was entitled to another \$900.00 security deposit, incorrectly labeled "damage deposit" by the landlord.

The tenant, in response, said that he gave a one month notice, or attempted to give a one month notice to the landlord of his intention to move out, and that he did move out on March 15, 2013.

The tenant said the landlord refused to accept his notice and that he had many other issues with the landlord, resulting in being forced to move out.

The tenant also said that he paid \$1400.00 in March, and that he was not obligated to pay further as he no longer lived there.

The tenant contended that the female tenant owed the balance of any unpaid rent as she became responsible for the rent once he moved out.

### Analysis

Based on the oral and written evidence provided and on a balance of probabilities, I find as follows:

As to the tenant's contention that he is no longer responsible for rent under the tenancy agreement in question, the two listed tenants are co-tenants of the rental unit and are therefore jointly and severally liable for meeting the requirements of the tenancy agreement and obligations for the landlord's losses.

The law places the responsibility on the tenants to apportion among themselves the amount owing to the landlord. Furthermore, as co-tenants they are jointly and severally liable for debts and damages relating to the tenancy. This means the landlord may recover the full amount of money due from all, or any one of the tenants.

As to the landlord's application, 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 \$2250.00 comprised of outstanding rent of \$2200.00 through April, 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.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$900.00 in partial satisfaction of his monetary award.

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 \$1350.00, 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.

I note that both parties seemed unaware of all their rights and obligations under the Residential Tenancy Act and I therefore informed both parties that they should contact the Residential Tenancy Branch ("RTB") to speak with an information officer in the event either has questions pertaining to their tenancy.

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: April 08, 2013

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Residential Tenancy Branch

