



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant    CNR  
                                 Landlord   OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security and pet deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy. As the Tenants did not attend the Hearing to support their application, I dismiss the Tenants' application without leave to reapply.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on March 5, 2013 in accordance with section 89 of the Act.

The conference call continued hearing only the Landlords' application.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenants' security and pet deposits?

### Background and Evidence

This tenancy started on August 31, 2011 as a 1 year fixed term tenancy with an expiry date of July 31, 2012 and then continued on a month to month basis. Rent is \$1,500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Landlords said the Tenants paid a security deposit of \$750.00 and a pet deposit of \$375.00.

The Landlords said that the Tenants did not pay \$100.00 of rent for December, 2012, \$200.00 of rent for January, 2013 and \$1,500.00 of rent for February, 2013 when it was due so the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated February, 25, 2013 on February 25, 2013 by personal delivery by the Landlords' agent. The Landlords continued to say that the Tenants have not paid the rent of \$1,500.00 for each month of March, 2013 and for April, 2013. The Landlords said they have not received any rent payment issuing the Notice to End Tenancy. The Landlords said they are requesting an Order of Possession for as soon as possible if their application is successful.

The Landlords continued to say that the Tenants have not paid \$151.84 in utility bills which the Landlords have paid and have included the receipts in the evidence package.

The Landlords also requested to retain the Tenants' security and pet deposits as partial payment of the unpaid rent.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it is personally delivered, or on February 25, 2013. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 2, 2013.

I find that the Tenants have not paid the overdue rent and has not applied for dispute resolution by March 2, 2013. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent. Consequently, I find the Landlords have established grounds to be awarded the unpaid rent for December, 2012 and January, February, March and April, 2013 in the amount of \$4,800.00 as requested by the Landlords. In addition the Landlords have included receipts for the utility bills in the amount of \$151.84 which I am awarding the Landlords as the utilities are the responsibility of the Tenants. Consequently, I find for the Landlords and award the Landlord a monetary claim for unpaid rent and utilities of \$\$4,951.84.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$4,951.84	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$5,001.84
Less:	Security Deposit	\$ 750.00	
	Pet Deposit	\$ 375.00	
	Subtotal:		\$ 1,125.00
	Balance Owing		\$3,876.84

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$3,876.84 have been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 02, 2013

---

Residential Tenancy Branch