



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Village II  
Gateway Property Management Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR; MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent ("CO") gave affirmed testimony at the Hearing.

CO testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were sent to the Tenant AC by registered mail on April 23, 2013. OC provided the tracking number for the registered documents. I am satisfied that the Tenant AC was duly served with the Notice of Hearing documents.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve each of the Tenants as set out under Section 89(1). In this case only the Tenant AC has been personally served with the Notice of Hearing documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. In other words, the Landlord may choose to seek a monetary award against one or both of the Tenants. As the Landlord did not serve the Tenant CW, as required by Section 89(1) of the Act, the Landlord's monetary claim against her is dismissed without leave to reapply. CO indicated that she wished to proceed against the Tenant AC only with respect to the Landlord's monetary claim. It will be up to the Tenants to apportion any monetary award between themselves.

The Landlord has also requested an Order of Possession. Section 89(2) of the Act determines that the Landlord may leave a copy of the Notice of Hearing documents related to a request for an Order of Possession at the rental unit with an adult who apparently resides with the Tenant. I therefore find that the Tenant CW has been sufficiently served with respect to the Landlord's application for an Order of Possession.

The Tenants did not sign into the Hearing, which remained open for 25 minutes.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

### **Background and Evidence**

CO gave the following testimony:

This tenancy started on July 1, 2012. There is a written tenancy agreement between the parties, but no copy was provided in evidence. Monthly rent is \$1,550.00, due the first day of each month. The Tenant AC paid a security deposit in the amount of \$775.00 on July 10, 2012. The Tenant CW was added to the tenancy agreement at some point after July 1, 2012.

The Tenants did not pay full rent when it was due on March 1, 2013, and still owe \$850.00 for the month of March. The Tenants did not pay any rent for April or May, 2013. CO asked to amend the Landlord's application to include a request for loss of income for the month of May, 2013. She also asked to apply the security deposit towards the Landlord's monetary award.

On April 5, 2013, the Landlord issued a 10 Day Notice to End Tenancy (the "Notice") and posted it to the Tenants' door on the same day, with a witness present. The Landlord provided a Proof of Service document, which is signed by the witness.

### **Analysis**

I accept that the Landlord served the Tenants with the Notice to End Tenancy by posting the Notice on the Tenants' door on April 5, 2013. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on April 18, 2013. Therefore, I granted CO's request to amend the Landlord's application to include loss of revenue for the month of May, 2013. I find that the Tenants are overholding and that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenants.**

Based on CO's undisputed testimony, I find that the Landlord has established a monetary award against the Tenant AC for unpaid rent for March and April, 2013, in the amount of **\$2,400.00** and loss of revenue for May, 2013 in the amount of **\$1,550.00.**

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the award. No interest has accrued on the security deposit.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant AC.

I hereby provide the Landlords a Monetary Order against the Tenant AC, calculated as follows:

Unpaid rent and Loss of revenue (\$2,400.00 + \$1,550.00)	\$3,950.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$4,000.00
Less security deposit	<u>- \$775.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$3,225.00</b>

### **Conclusion**

The Landlord is provided an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is provided a Monetary Order in the amount of **\$3,225.00** for service upon the Tenant AC. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: May 22, 2013

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Residential Tenancy Branch

