



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: **OPR, MNR, MNSD, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, compensation for damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

The landlord confirmed that he did not serve each tenant with a copy of the tenancy agreement and the 10 Day Notice to End Tenancy, that was previously given to the tenants. However, there was no dispute in relation to the details of these documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on October 1, 2012. Rent is \$750.00 per month, due on the first day of each month. A deposit in the sum of \$375.00 was paid.

The tenants agreed that they each made separate payments to the landlord, but that they were co-tenants under 1 agreement.

Tenant G.C. did not dispute receipt of a Ten Day Notice to End Tenancy for Unpaid Rent that was given to him on February 5, 2013. The Notice was handed to the tenant in the presence of the landlord and building manager, at the manager's unit. The manager testified that G.C. told the landlord that if he had not paid all rent arrears owed by the end of April 2013, he would vacate.

The Notice was issued on February 5, 2013 and had an effective vacancy date of January 17, 2013. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,130.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental unit by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

There was no dispute that since October 2012 the tenants have paid \$1,865.00 in rent. The landlord has claimed \$3,410.00 compensation. The landlord also stated a window was broken, but that claim was not included in the detailed calculation.

There was no dispute that the landlord had told the tenants they must pay the rent owed or vacate the unit. When rent was not paid in full by April 2013 the landlord submitted the application for dispute resolution.

### Analysis

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In this case the landlord made an error and included an effective vacancy date of January 17, 2013. As the effective date predated the issue date of the Notice, I find that the Notice effective date is amended to February 17, 2013.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on February 17, 2013, pursuant to section 46 of the Act. When G.C. was served the Notice, that also had the effect of service to the 2<sup>nd</sup> tenant, an adult with whom G.C. resides.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me the tenants have confirmed that rent is owed to the landlord and that they did not dispute the Notice. Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended effective February 17, 2013. On this basis I will grant the landlord

an Order of Possession that is effective two days after the order is served to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$3,410 to May 1, 2013 inclusive and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$375.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,085.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 15, 2013

---

Residential Tenancy Branch

