



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for damages; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: 10 Day Notices to end tenancy for unpaid rent; the tenancy agreement; e-mails amongst the parties; a notice of rent increase; and a receipt dated May 10, 2013.

The parties confirmed they entered into a fixed term tenancy agreement that began on December 1, 2010 and switched to a month to month tenancy after November 30, 2011. Rent is payable on the first of each month and was initially \$1,900.00 and was subsequently increased to \$1,990.00 per month effective March 1, 2013. On November 27, 2010 the Tenants paid \$950.00 as the security deposit and in December 2012 they paid \$200.00 as a pet deposit.

The Landlord testified that when the Tenants short paid April and May 2013 rent, he personally served them with a 10 Day Notice on May 2, 2013 for the outstanding balance of \$720.00. On May 10, 2013 he found cash payment of \$700.00 that was placed through the mail slot so he issued a receipt which states "for use and occupancy only. Receipt of these monies does not constitute re-instatement of tenancy". After applying this payment there was still a balance owing of \$20.00.

On June 1, 2013, he received two personal cheques totalling \$1,310.00 for June rent. He has not attempted to cash these cheques and was awaiting the outcome of this hearing. He is seeking to regain possession of the unit and a monetary order for the outstanding rent for May and June 2013.

The Tenants confirmed receipt of the 10 Day Notice. They testified that two of the three Tenants have been paying their portion of the rent but that one Tenant is responsible for the short payment in May and the non payment for June rent. They have served their notice to end tenancy effective June 30, 2013.

### Analysis

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means a landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on May 2, 2013, and the effective date of the Notice is **May 12, 2013**, in accordance with section 46 of the Act. The Tenants did not pay the rent owed in full and did not dispute the Notice. Therefore, the

Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$720.00 which was due May 1, 2013. The Tenants made a partial payment of \$700.00 which was received by the Landlord for use and occupancy only. I find the Tenants failed to pay rent in accordance with the tenancy agreement, which is a breach of section 26 of the *Act*. Accordingly, I award the Landlord a Monetary Award for unpaid May 2013 rent of **\$20.00**.

As noted above this tenancy ended **May 12, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for June 2013, not rent. The Tenants are still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of June 2013, in the amount of **\$1,990.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid May 2013 Rent	\$ 20.00
Use & Occupancy and Loss of Rent for June 2013	1,990.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,060.00</b>
<b>LESS:</b> Security Deposit \$950.00 + Interest 0.00	-950.00
Pet Deposit \$200.00 + Interest 0.00	<u>-200.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 910.00</u></b>

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order in the amount of **\$910.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the Landlord indicated in his testimony that he is holding two personal cheques which total \$1,310.00, which he has not attempted to cash. The Landlord is now at liberty to cash those checks. If they clear the bank then the monetary order would be reduced by that amount and the Landlord will be required to disburse the full amount of the pet and security deposits in accordance with section 38 of the Act. If the June rent cheques do not clear the bank then the Landlord is at liberty to enforce the full amount of the Monetary Order.

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: June 05, 2013

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Residential Tenancy Branch

