



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Infinity Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC and FF

### Introduction

This hearing was convened on an application made by the landlord on May 29, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on May 14, 2013. The landlord also sought a Monetary Order for the unpaid rent, loss of rent and recovery the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested.

### Background and Evidence

This tenancy began on March 14, 2013. Rent is \$1,000 per month and the landlord holds a security deposit of \$500 paid on March 8, 2013.

During the hearing, the landlord's agents gave evidence they had served the tenants with a two-month Notice to End Tenancy for landlord use on April 26, 2013 setting an end of tenancy date of June 30, 2013.

In the interim, the tenant's cheque for rent for May 1, 2013 was returned NSF. After advising the tenants, when the agents did not receive a replacement payment, they issued the 10-day Notice to End Tenancy for unpaid rent on May 14, 2013.

In the interim, the tenants remain in the rental unit and have not paid the rent for May or June 2013.

The agents said they would continue to waive the June 2013 pursuant to the Notice to End Tenancy for landlord use, but requested an Order of Possession under the 10-day notice for unpaid rent and a monetary award for the unpaid rent for May 2013.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the legislation or rental agreement.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. Tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) & (6) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the 10-day Notice to End Tenancy which was May 27, 2013 taking into account the three days for deemed service of notice served by posting.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the \$1,000 unpaid rent for May 2013 and recovery of the filing fee for this proceeding. As permitted under section 72 of the *Act*, I hereby authorize and order that the landlord retain the tenants' security deposit in set off against the balance owed.

Thus, I find that the tenants owe the landlord an amount calculated as follows:

Rent for May 2013	\$1,000.00
Filing fee	<u>50.00</u>
Subtotal	\$1,050.00
Less retained security deposit (No interest due)	<u>- 500.00</u>
<b>TOTAL</b>	<b>\$ 550.00</b>

### Conclusion

The landlord waived the right to claim rent for June 2013.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$550.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 25, 2013

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Residential Tenancy Branch