



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent or breach of a material term of their residential tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:22 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord provided sworn testimony and written evidence (including a proof of service document) that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 5:30 p.m. on June 13, 2013. Her witness confirmed that he saw her post this Notice on the tenants' door. The landlord testified that she sent both tenants copies of her dispute resolution hearing package in which she was seeking a monetary award of \$6,704.58 and an Order of Possession by registered mail on June 25, 2013. She provided copies of the Canada Post Tracking Numbers and Customer Receipt to confirm these registered mailings. She testified that these packages were returned to her by Canada Post. I am satisfied that the landlord served the above documents to both tenants in accordance with the *Act*.

The landlord testified that she attended the tenants' address on July 17, 2013 with her witness and handed the female tenant, HJK, a copy of her amended hearing package.

In that package, she was seeking an increased monetary award of \$11,104.58 and an Order of Possession, as well as her written evidence. The landlord testified that she left a second package with the female tenant for the male landlord at that time. The landlord's witness confirmed that he saw the landlord hand the female tenant these packages. I am satisfied that the landlord served the female tenant with the above documents in accordance with the *Act* and that I can consider the landlord's amended application for a monetary award of \$11,104.58 against the female respondent.

I am not satisfied that the male tenant (SU) has been served with the landlord's amended application for dispute resolution seeking an increased monetary award of \$11,104.58. As such, I can only consider the landlord's application for a monetary award of \$6,704.58 against the male tenant/respondent (SU). This is the amount identified in the original application for dispute resolution.

During the hearing, the landlord withdrew her application for a monetary award for damage. She said that she has been unable to obtain vacant possession of the rental unit, so is uncertain of the costs of repairing damage arising out of this tenancy. Once she gains access to the rental unit and repairs the damage, she plans to submit a new application for dispute resolution seeking a monetary award for damage. The landlord's application for a monetary award for damage is withdrawn. The landlord has leave to reapply for damage arising out of this tenancy once the tenancy ends and the landlord is able to assess the extent of the damage and conducts the necessary repairs.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2012. Monthly rent is set at \$2,000.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$1,000.00 security deposit paid on or about September 1, 2012.

The landlord's 10 Day Notice identified \$2,000.00 in unpaid rent owing on June 13, 2013. The landlord testified that the tenant has not paid anything further to her.

The landlord's application for a monetary award of \$11,104.58 included the following items listed in the Monetary Order Worksheet attached to her application:

<b>Item</b>	<b>Amount</b>
Unpaid June 2013 Rent	\$2,000.00
Unpaid July 2013 Rent	2,000.00
Loss of Rent for August 2013	2,000.00
Personal Mailbox, Use of Computer and Printer	104.58
Damage to Drywall and Lock	500.00
Damage – Illegal Wiring & Fire Hazard	500.00
Damage to Garage	3,000.00
<b>Total of Above Items</b>	<b>\$10,104.58</b>

The landlord also requested authorization to retain the tenant's \$1,000.00 security deposit and to recover her \$100.00 filing fee for her application.

#### Analysis – Order of Possession

The tenants failed to pay the June 2013 rent in full within five days of being deemed served with the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by June 26, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis – Landlord's Application for a Monetary Order for Unpaid Rent & Loss of Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the tenants have not paid their rent for June and July 2013. Given the timing of this hearing and the landlord's evidence that repairs will need to be undertaken in order to re-rent the premises to new tenants, I accept that the landlord has established entitlement to her loss of rent for August 2013. I accept that the landlord could not advertise for new tenants when she has been uncertain as to when and if the tenants will vacate the rental unit. For the above reasons, I find that the tenants have not complied with the terms of their fixed term tenancy agreement. I find that the landlord is entitled to a monetary award of \$2,000.00 for unpaid rent for each of June and July 2013, as well as a monetary award of \$2,000.00 for August 2013 for loss of rent.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in her application, I allow her to recover her \$100.00 filing fee from the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application from the tenants and to retain the tenants' security deposit:

Item	Amount
Unpaid June 2013 Rent	\$2,000.00
Unpaid July 2013 Rent	2,000.00
Loss of Rent for August 2013	2,000.00
Less Security Deposit	-1,000.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$5,100.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for a monetary award for damage arising out of this tenancy is withdrawn. The landlord has leave to reapply for a monetary award for damage once this tenancy ends and repairs are conducted.

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: July 26, 2013

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Residential Tenancy Branch

