



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: OPR, MNR and FF  
Tenants: MT, CNR and OLC

### Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application of June 6, 2013, the landlords sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on June 1, 2013. The landlord also sought a monetary award for unpaid rent and utilities.

By application of June 7, 2013, the tenants sought an extension of the five-day time limit to make application to contest the Notice to End Tenancy, to have the Notice to End Tenancy set aside and an Order that the landlords comply with the legislation and rental agreement.

Despite having made application, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, the tenants' application is dismissed without leave to reapply.

### Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested or whether the notice to end tenancy should be set aside.

### Background and Evidence

This tenancy began on December 21, 2012. Rent is \$1,350 per month due on the last day of the preceding month, plus two-thirds of the utilities. The landlords hold a security deposit of \$675 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of June 1, 2013 had been served when the tenants had a rent shortfall from May 2013 of \$50 and they had not paid the rent due on May 31, 2013.

In the interim, the landlord gave evidence that unpaid utilities were added to the unpaid rent. She stated that the tenants made a payment \$2,193.41 on June 28, 2013 which was accepted for use and occupancy only. The landlord stated that that payment left the tenants with a credit of \$198.07 toward July 2013.

The landlords stated that because of the ongoing difficulty of having the rent paid on time, they wished to obtain an Order of Possession to end the tenancy.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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. The 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 their application to contest it was made late and it is dismissed without leave to reapply on failure to appear.

Accordingly, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was June 11, 2013.

Accordingly, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenants.

As to the monetary portion of the application, it remains possible that the landlords will be able to find new tenants for mid-July 2013. Combined with the partial credit the tenants have for July and the need for proper disposition of the security deposit in accordance with section 38 of the *Act*, it is not possible to finalize the balancing of accounts at present.

Therefore, the landlords are granted leave to reapply on their monetary claim.

For the present, I find that they are entitled to recover the filing fee for this proceeding from the tenants and I hereby authorizes that they may do so by retaining \$50 from the tenants' security deposit.

### Conclusion

The tenants' application is dismissed without leave to reapply.

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.

The landlords are granted liberty to make application for a monetary award when they have regained possession of the rental unit and are able to accurately and fully ascertain any damage or losses.

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 05, 2013

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Residential Tenancy Branch

