



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, O, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding, to keep the Tenants' security and pet deposits in partial payment of those amounts and for other considerations.

The Landlord said she served the Tenants with the Application and Notices of Hearing (the "hearing package") by registered mail on September 13, 2013. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?
5. What other considerations are there?

### Background and Evidence

This tenancy started on March 1, 2011 as a 1 year fixed term tenancy and then renewed on additional fixed term tenancy agreements. The present tenancy agreement started on March 1, 2013 as a fixed term tenancy with an expiry date of February 28, 2014. Rent is \$1,461.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$675.00 on February 14, 2011 and pet deposits totally \$450.00 were paid during the tenancy.

The Landlord said that the Tenants did not pay \$1,461.00 of rent for August, 2013 when it was due and as a result, on August 16, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 16, 2013 on the door of the Tenants' rental unit. The Landlord said the Tenants still owe \$26.50 on the August, 2013 rent and \$1,461.00 in rent for each month of September and October, 2013.

The Landlord further indicated that the Tenants are living at the rental unit and the Tenants have told the Landlord that they will pay the full rent by November 15, 2013. The Landlord said she agreed to this arrangement, but the Landlord is still requesting an Order of Possession for November 15, 2013 and a monetary claim of \$2,948.50 for the total unpaid rent for August, September and October, 2013.

The Landlord also requested to retain the Tenants security and pet deposits, to recover the \$50.00 filing fee for this proceeding and said she will apply for the November, 2013 rent if unpaid in November, 2013.

The Tenant said he is a guarantor for this tenancy so he does not know the exact details of what is happening, but he does realize that he is responsible for any unpaid rent. The Tenant/Guarantor thought some of the Tenants who were living in the unit would be on a conference call, but none of them phoned in.

The Tenant/Guarantor said it is his understanding the rent is to be paid in full by November 15, 2013.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, Tenants must pay the overdue rent or apply for dispute resolution. If the Tenants fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted on the door, or on August 19, 2013. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 24, 2013.

I find that the Tenants have not paid the overdue rent and have not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on November 15, 2013 as the Landlord has requested.

I also find that the Landlord is entitled to recover unpaid rent for August, 2013, in the amount of \$26.50, unpaid rent for September, 2013 in the amount of \$1,461.00 and unpaid rent for October, 2013 in the amount of \$1,461.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,948.50	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,998.50
Less:	Security Deposit	\$ 675.00	
	Pet Deposits	\$ 450.00	
	Subtotal:		\$1,125.00
	Balance Owing		\$1,873.50

### Conclusion

An Order of Possession effective at 1:00 p.m. on November 15, 2013 and a Monetary Order in the amount of \$1,873.50 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: October 22, 2013

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Residential Tenancy Branch

