



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HSIN HUA DEVELOPMENTS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 16, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all the security deposit; 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.

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. Has the Landlord proven entitlement to a Monetary Order?

### Background and Evidence

The parties agreed they entered into a written tenancy agreement that began on February 1, 2013. Rent is payable on the first of each month in the amount of \$1,250.00 and prior to February 1, 2013, the Tenants paid \$625.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay the full rent for October 2013, he posted a 10 Day Notice to their door. Since that date the Tenants made another partial payment towards October rent and have paid nothing towards November rent.

The current balance owing is \$1,340.00 which is comprised of \$90.00 owing for October and \$1,250.00 owing for November. The Landlord was willing to continue the tenancy if the Tenants were able to pay their rent in full within two days.

The Tenant testified that they were not able to pay the rent owing within two days. He indicated that he had attempted to make payments towards the balance owing but the resident manager refused to take the partial payments and instructed them to look elsewhere for a place to rent. They have since put a deposit down on a new place and cannot afford to pay rent for two different places.

The Landlord advised that he wished to proceed with his application.

### Analysis

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 confirmed receipt of the 10 Day Notice that was served on October 4, 2013, and the effective date of the Notice is **October 14, 2013**, in accordance with section 46 of the Act. The Tenants did not pay the rent 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 \$90.00 which was due October 1, 2013. The Tenants failed to pay the full 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 rent of **\$90.00**.

As noted above this tenancy ended **October 14, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for November 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 they 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 November 2013, in the amount of **\$1,250.00**.

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 October 2013 Rent	\$ 90.00
Loss of Rent, Use & Occupancy for November	1,250.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,390.00
<b>LESS:</b> Security Deposit \$625.00 + Interest 0.00	<u>-625.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 765.00</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 **\$765.00**. 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.

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: November 27, 2013

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Residential Tenancy Branch

