



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP TEN DEVELOPMENT & MSYC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LANDLORD: OPR, MNR, MNDC, MNSD, FF  
TENANT: CNR, RR, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for a rent reduction and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on November 28, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on November 14, 2013 in accordance with section 89 of the Act.

The hearing started at 2:00 p.m. as scheduled, however the Tenants did not dialled into the conference call. In the absence of any evidence from the Tenants to support the application, the Tenants' application is dismissed without leave to reapply.

It should be noted that the Tenants' application has two applicants named on it, but only one J. A. the female applicant is on the tenancy agreement and the other applicant J.M. is an occupant.

### Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenants' security deposit?

### Background and Evidence

This tenancy started on October 1, 2012, as a 2 year fixed term tenancy with an expiry date of September 30, 2014. Rent is \$2,650.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,325.00 on August 27, 2012.

The Landlord said that the Tenant did not pay \$2,650.00 of rent for each month of October and November, 2013 when it was due and as a result, on November 5, 2013 they personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2013 to the Tenant for \$5,300.00 of unpaid rent. The Landlord said the Tenant has unpaid rent for December, 2013 of \$2,650.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for two days after service of the Order if their application is successful.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

The Landlord continued to say that she has applied for compensation for loss of rental income for January, 2014 in the amount of \$2,650.00 as this is a fixed term tenancy agreement and the Tenant will be living in the rental unit for part of January, 2014 even if the Landlord is successful in this application today.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant 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 on the day it was delivery in person, or on November 5, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than November 10, 2013. The Tenant did make an application on November 12, 2013 which is 2 days over the time limit to apply to dispute the Notice to End Tenancy.

I find that the Tenants have not paid the overdue rent and has not applied for dispute resolution within the time limits of the Act. As well the Tenants' late application is dismissed without leave to reapply because the Tenants did not appear at the hearing. 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 48 hours after service of it on the Tenants.

I also find that the Landlords are entitled to recover unpaid rent for October, November and December, 2013 in the amount of \$2,650.00 for each month or \$7,950.00. I further find that the Landlord is entitled to recover a loss of rental income for January, 2014 in the amount of \$2,650.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$7,950.00	
	Loss of Rental Income:	\$2,650.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$10,700.00
Less:	Security Deposit	\$1,325.00	
	Subtotal:		\$ 1,325.00
	Balance Owing		\$ 9,375.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$9,375.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenant: 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.

The Tenant's application is dismissed without leave to reapply.

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: December 30, 2013

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Residential Tenancy Branch