



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

The tenancy commenced nine years ago. Rent is currently \$945.00 due on the first day of each month.

The tenants agreed that on March 3, 2015 they received a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of March 13, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$645.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the

date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

There was no dispute that the tenants paid \$300.00 on March 1, 2015. The next payment made was in the sum of \$440.00 on March 6, 2015. No further rent was paid until April 1, 2015 in the sum of \$720.00. The most recent payment made was \$320.00 on April 17, 2015. The landlord has issued receipts for use and occupancy. The tenants confirmed they had been issued receipts.

The landlord has claimed \$1,150.00 for unpaid March rent and loss of April 2015 rent revenue.

### Analysis

I find that the Notice ending tenancy was served to the tenants effective March 3, 2015; the day the tenants confirmed it was received.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on March 13, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I find that effective March 3, 2015 the tenants owed a balance of \$645.00 which had to be paid no later than March 8, 2015. Effective March 6 the tenants had paid a further \$440.00; leaving a balance owed in the sum of \$205.00 for March 2015 rent. The tenants did not pay the balance of March 2015 rent until April 1, 2015.

Therefore, as the tenants did not pay all of March 2015 rent owed within five days of March 3, 2015 I find, pursuant to section 46(5) of the Act that the tenants are conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; March 13, 2015.

Since the tenancy ended effective March 13, 2015 I find that the tenants have been over-holding since that time and owe per diem rent for each day they occupy the rental unit. Per diem rent totals \$945.00 for each month.

Since March 1, 2015 the tenants have paid \$1,780.00. Therefore, I find that the landlord is entitled to balance outstanding of \$110.00 for rent and rent revenue to April 2015, inclusive.

As the application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants.

The landlord did not supply a copy of the tenancy agreement as evidence and the value of the security deposit was not provided. Therefore, I find that the landlord is entitled to deduct the sum of \$110.00 and the \$50.00 filing fee from the security deposit that is held in trust. The balance of the deposit and any interest up to this date and beyond will be held in trust and disbursed as required by the legislation.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession.

The landlord may deduct \$160.00 from the security deposit held in trust for unpaid rent and the filing fee owed

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 20, 2015

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Residential Tenancy Branch

