



# 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 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 and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on or about March 31, 2015. The Tenant confirmed receiving the Landlord hearing package. 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 with both parties in attendance.

### 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?

### Background and Evidence

This tenancy started on January 15, 2015 as a 3 month fixed term tenancy with an expiry date of April 15, 2015. Rent is \$700.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$350.00 on January 23, 2015.

The Landlord said that the Tenants did not pay \$200.00 of rent for February, 2015 and \$700.00 of unpaid rent for March, 2015 when it was due and as a result, on March 15, 2015 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 15, 2015 to the female Tenant. The Landlord said the Tenants have unpaid rent for April and May, 2015 as well in the amount of \$700.00 for each month.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said the Landlord and the Tenant made an agreement for the Tenant to continue the tenancy and the Tenant would work for the Landlord to pay the rent. The Landlord said he did not make this agreement and the rent is unpaid. The Tenant continued to say the Landlord has not given him any written receipts and there is no written agreement for the work to pay for the rent. The Tenant said they have paid all the rent and the Landlord will not give them receipts. The Tenant was asked if he made an application to dispute the Notice to End Tenancy or for any other claims he may have against the Landlord. The Tenant said he has not made any applications to dispute the Landlord's claims.

In closing the Tenant said this is not fair and he will be making a counter claim.

The Landlord said in closing that he did give receipts when money was paid and he included the receipts for the security deposit and the first month's rent in his evidence package. The Landlord said he wants to end the tenancy and recover his unpaid rent.

### 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 Tenants are deemed to have received the Notice to End Tenancy the day it is served by personal delivery, or on March 15, 2015. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 20, 2015.

I find that the Tenants have not paid the overdue rent, have not submitted any agreements on rent payments with the Landlord and have not applied for dispute resolution. Consequently, I find pursuant to s. 55 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 Landlord is entitled to recover unpaid rent for February, 2015, in the amount of \$200.00 and \$700.00 for each month of March, April and May, 2015 in the amount of \$2,100.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

|       |                    |            |            |
|-------|--------------------|------------|------------|
|       | Rent arrears:      | \$2,300.00 |            |
|       | Recover filing fee | \$ 50.00   |            |
|       | Subtotal:          |            | \$2,350.00 |
| Less: | Security Deposit   | \$350.00   |            |
|       | Subtotal:          |            | \$ 350.00  |
|       | Balance Owing      |            | \$2,000.00 |

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,000.00 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: May 13, 2015

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Residential Tenancy Branch

