



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding YALETOWN NINE THREE NINE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and late fees; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I was provided evidence that the landlord sent both hearing packages to the two named tenants by way of one registered mail package. Although the landlord was required to send a hearing package to each tenant separately both tenants were in attendance at the hearing and I confirmed that each of them were in receipt of the hearing documents. Therefore, I deemed both named tenants to be sufficiently served pursuant to the authority afforded me under section 71 of the Act.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and late fees?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced April 1, 2013 and after a one year fixed term the tenancy continued on a month to month basis. The tenants paid a security deposit of \$750.00. The tenancy agreement requires that the tenants pay rent of \$1,500.00 on the first day of every month and there is a provision for the payment of an administrative fee of \$25.00 for every late payment of rent. Starting April 1, 2015 the rent was increased to its current amount of \$1,537.50 by way of a Notice of Rent Increase.

On December 2, 2015 the landlord personally served one of the co-tenants (referred to by initials VO) with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$2,537.50 was outstanding as of December 1, 2015 and a stated effective date of December 12, 2015 (herein referred to as the Notice). Upon review of the ledger provided as evidence by the landlord the amount appearing on the Notice appears to be outstanding rent of \$2,512.50 plus a late fee of \$25.00.

After serving the Notice upon the tenants the landlord recorded the following payments from the tenants: \$600.00 on December 6, 2015; \$800.00 on December 22, 2015; and \$600.00 on January 7, 2016 bringing the balance of rent outstanding to \$512.50. The landlord accepted these payments for use and occupancy only.

The landlord then filed its Application seeking to recover the outstanding amount of \$512.50 plus a late fee for December 2015; unpaid rent and a late fee for January 2016 and unpaid rent for February 2016 in the total amount of \$3,637.50.

During the hearing, the landlord submitted that the tenants subsequently made two payments of \$1,000.00 each, on January 31, 2016 and February 9, 2016. The landlord accepted these payments for use and occupancy only. The landlord stated that after taking into account these two payments of \$1,000.00 that were received after the application was filed, the current balance outstanding is \$1,587.50 up to and including the month of February 2016.

The tenants stated that the two \$1,000.00 payments were given to the landlord on January 27, 2016 and February 5, 2016 and the tenants questioned whether the \$600.00 payment recorded in the ledger on January 7, 2016 was reflected in the Monetary Order worksheet that was dated January 6, 2016.

The landlord's ledger was reviewed with the landlords and the tenants during the hearing and reconciled to the landlord's Monetary Order worksheet. The landlord confirmed that the \$600.00 payment was reflected in the Monetary Order worksheet because the payment was received before January 7, 2016. The landlord explained that the dates appearing in the ledger relate to the dates the amount is posted in the landlord's account and not the date the payment is actually received from the tenant. After hearing the landlord's explanation as to the dates and amounts appearing in the landlord's submissions the tenants and I were satisfied that the landlord has recorded all of the payments received from the tenants.

The landlord requested an Order of Possession effective February 29, 2016.

Documentary evidence provided for this proceeding included: the tenancy agreement; the Notice of Rent Increase; the 10 Day Notice; Proof of Service of the 10 Day Notice; the ledger; and, a registered mail receipt.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay all of the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord served the tenants with a 10 Day Notice to End Tenancy on December 2, 2015. Accordingly, I find that the tenants had until December 7, 2015 to pay the outstanding rent of \$2,512.50 in order to nullify the Notice, which did not happen. Nor, did the tenants file to dispute the Notice. Accordingly, I find the tenancy came to an end on the effective date of December 12, 2015 and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective February 29, 2016, as requested.

Based upon the evidence before me, and considering the tenants are still in possession of the rental unit, I find the landlord is entitled to recover unpaid and/or loss of rent for the months up to and including February 2016. Upon review of the tenancy agreement, I am satisfied the late fee clause is valid and meets the requirements of section 7 of the Residential Tenancy Regulations. Accordingly, I find the landlord is entitled to collect late fees of \$25.00 for each late payment of rent while the tenancy was in effect. Since the tenancy agreement ended in December 2015 I find the landlord's right to charge late fees is limited to December 2015 and preceding months. I also award the landlord the filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

December 2015 rent outstanding at time of filing	\$ 512.50
Plus: loss of rent for January 2016	1,537.50
Plus: loss of rent for February 2016	1,537.50
Less: two payments received after filing	<u>(2,000.00)</u>
Outstanding amount per landlord during hearing	\$1,587.50
Plus: late fee for December 2015	25.00
Plus: filing fee	<u>50.00</u>
Sub-total	\$1,662.50
Less: security deposit	<u>(750.00)</u>
Monetary Order for landlord	\$ 912.50

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court as necessary.

### Conclusion

The landlord has been provided an Order of Possession with an effective date of February 29, 2016 to serve and enforce if necessary. The landlord has been authorized to retain the security deposit and the landlord has been provided a Monetary Order for the balance of \$912.50 to serve and enforce.

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: February 19, 2016

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Residential Tenancy Branch

