



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**     OPR, MND, MNR, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the hearing, gave affirmed testimony and provided an evidence package in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 10, 2011, the tenants did not attend the conference call hearing. All information and testimony provided by the landlord has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This month-to-month tenancy began on January 15, 2010, and the tenants still reside in the rental unit. Rent in the amount of \$1,260.00 per month, including utilities, is payable in advance on the 1<sup>st</sup> day of each month. On January 12, 2010, the landlord collected a security deposit from the tenants in the amount of \$550.00. The landlord testified that no pets were permitted in the rental unit so no pet damage deposit was collected, although the landlord learned that the tenants had a dog about 7 months into the tenancy.

The landlord further testified that the tenants have been consistently late paying the rent, and have made the following rental payments:

DATE	AMOUNT DUE	AMOUNT PAID	AMOUNT OWING
May 1, 2010	\$1,260.00	\$1,172.00	\$248.00
June 1, 2010	\$1,260.00	\$700.00	\$808.00
July 1, 2010	\$1,260.00		\$2,068.00
July 3, 2010		\$700.00	\$1,368.00
July 16, 2010		\$300.00	\$1,068.00
August 1, 2010	\$1,260.00		\$2,328.00
August 3, 2010		\$800.00	\$1,528.00
August 8, 2010		\$300.00	\$1,228.00
September 1, 2010	\$1,260.00		\$2,488.00
September 2, 2010		\$1,000.00	\$1,488.00
October 1, 2010	\$1,260.00		\$2,748.00
October 2, 2010		\$1,150.00	\$1,598.00
November 1, 2010	\$1,260.00		\$2,858.00
November 3, 2010		\$1,250.00	\$1,608.00
December 1, 2010	\$1,260.00		\$2,868.00
December 6, 2010		\$1,260.00	\$1,608.00
January 1, 2011	\$1,260.00		\$2,868.00
January 3, 2010		\$500.00	\$2,368.00
February 1, 2011	\$1,260.00		\$3,628.00

The landlord further testified that on January 3, 2011 she served the male tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that notice was provided in advance of the hearing. The tenants did not pay the outstanding rent and have not served the landlord with an application for dispute resolution.

## **Analysis**

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord is at liberty to serve the tenant with a notice to end the tenancy. If the tenant pays the rent in full within 5 days, the notice has no effect. If the tenant does not pay the rent in full within 5 days, the tenant must make an application for dispute resolution to dispute the notice, or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In the circumstances, I find that the tenants did not pay the rent in full or apply for dispute resolution. Therefore the landlord is entitled to an Order of Possession.

With respect to the monetary order, I find that the landlord has established a claim for \$3,628.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

With respect to the landlord's claim for a monetary order for damage to the unit, site or property, I find that the landlord has failed to establish that claim.

## **Conclusion**

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants. The tenants must be served with the Order of Possession. If the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order that the landlord retain the security deposit in the amount of \$550.00 in partial satisfaction of the claim, and I grant the landlord a monetary order in the amount of \$3,128.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed.

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 21, 2011.

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Residential Tenancy Branch