



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Unique Real Estate Accommodations Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 71 of the *Act*, after the landlord applied for a Substitute Service order with the Residential Tenancy Office. The landlords were ordered to serve the tenants by e-mail and by posting the notice of hearing to the tenants' door as the tenants are presently out of the country. The hearing documents were e-mailed and posted to the tenants' door on April 03, 2013.

The landlord's agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with s. 71 of the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agents testify that this tenancy started on April 15, 2012 and is a fixed term tenancy that was due to expire on April 30, 2013. Rent for this unit was \$2,800.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$1,400.00 on April 12, 2012.

The landlord's agents testify that the tenants failed to pay rent for January and February, 2013 of \$5,600.00. A 10 Day Notice was posted to the tenants' door on February 27, 2013. This Notice informed the tenants that they had five days to either pay the outstanding rent or dispute the Notice or the tenancy would end on March 12, 2013. The landlord's agents testify that the tenants were out of the country and corresponded by e-mail to the landlords agents. The landlord's agents requested payment of the outstanding rent and provided copies of the 10 Day Notice by email on February 27, 2013. Copies of the e-mails correspondence between the parties has been provided in evidence.

The landlord's agent testifies that since the Notice was served the tenants failed to pay the rent arrears and have also failed to pay rent for March and April, 2013 to the sum of \$5,600.00. The total amount of outstanding rent is now \$11,200.00. A site inspection

was done at the rental unit and the landlords have submitted documentary evidence to show that the tenants' belongings remain in the unit and therefore the tenants still have possession of the unit. The tenants had contacted the landlord to say they were returning to Canada in March but to date the landlords have received no communication from the tenants as to their return. The landlords seek an Order of Possession to take effect as soon as possible and request a Monetary Order for the unpaid rent of \$11,200.00.

The landlord's agent testifies that the Strata Council informed the landlord/owner of the unit that the tenants' vehicle had caused skid marks in the parking area. The Strata Council imposed a fine of \$2,000.00 on the landlord/owner for these marks. The Strata Council also sought the cost to repair the parkade flooring and requested the landlord/owner to pay the amount of \$11,032.00. The landlord/owner and Strata Council settled on a total amount of \$5,000.00 including the initial strata fine and the landlord seeks to recover this sum from the tenants and have amended their monetary claim accordingly.

The landlord's agent testifies that the Strata Council provided a photograph showing the tire marks on the parkade floor and informed the landlord/owner of the unit that these marks come out of the parking stall allocated to the tenants. The landlord's agent testifies that he asked the building concierge for the video of the tenants causing this damage and was told that the video had been damaged or erased. The landlord's agent agrees that a lot of tenants residing in the building use this parkade and they asked the concierge for further proof that the tenants were responsible for this damage. The concierge stated to the landlords agents that they matched the tenants' tires to the marks and they were the same. No evidence of this has been provided by the landlord.

The landlord seeks an Order keep the tenants' security deposit in partial satisfaction of their claim and seek to recover the \$100.00 filing fee from the tenants.

The landlord's agent verbally requests an Order for Substitute Service of the Monetary Order and Order of Possession at the hearing. The landlord's agent testifies that they have no knowledge that the tenants have returned to the country and request a Substitute Service order to serve the tenants with the Orders by e-mail, to the e-mail address the landlords and tenants have used in previous correspondence and by posting the Orders to the door of the rental unit

### Analysis

Section 26 of the *Residential Tenancy Act (Act)* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, as the tenants have failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord that the tenants have failed to pay rent for January, February, March and April, 2013 and the landlord is entitled to recover rent arrears. Consequently, the landlord will receive a Monetary Order to the sum of **\$11,200.00** pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

I Order the landlord to keep the tenants security deposit of \$1,400.00 pursuant to s. 38(4)(b) of the *Act*. This sum will be offset against the outstanding rent.

With regard to the landlords claim for damage caused to the parkade by the tenants vehicle. In this matter I have applied a test for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having reviewed the testimony and documentary evidence provided by the landlord and it is my decision that the landlord has not met the burden of proof that the tenants are responsible for this damage to the parkade. The Strata Council has not provided any evidence to support their claim that the tenants vehicle caused this damage and it appears as if the only evidence is based on hearsay of the building concierge who informed the landlord's agent that they had a video which was either damaged or erased and they had matched the tenants tires to the marks on the parkade flooring. As no proof has been provided to show that this damaged was caused by the actions or

neglect of the tenants I must dismiss this section of the landlord's amended claim for \$5,000.00 without leave to reapply.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for four months	\$11,200.00
Filing fee	\$100.00
Less security deposit	(-\$1,400.00)
Total amount due to the landlord	\$9,900.00

With regard to the landlord request for a substitute Service Order to serve the tenants with the Monetary Order and Order of Possession, I refer the parties to s. 71 of the *Act*.

**Director's orders: delivery and service of documents**

**71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Having considered the landlords agents request and in light of the fact the landlords agents have received no communication from the tenants to confirm that the tenants have returned to the country, I find it is likely that by serving the tenants by e-mail to the e-mail address used in former correspondence between the tenants and landlord and by posting the orders to the door of the rental unit that this will result in the tenants receiving the Monetary Order and Order of Possession.

### Conclusion

The landlord's agent's oral request for Substitute Service is hereby granted pursuant to s. 71 of the *Act*.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$9,900.00**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days after service on the tenants**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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 02, 2013

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Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*  
**(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)