



# Dispute Resolution Services

Page: 1

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 made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, parking, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord stated that on November 17, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenants via one registered mail package to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. During the hearing the landlord checked the Canada Post web site which indicated that neither tenant had signed, accepting the mail.

I have determined, pursuant to section 71(2)(b) of the Act, that the tenants were sufficiently served with Notice of this hearing for the purposes of an application requesting an Order of possession. One of the tenants was expected to sign for the registered mail package, which would then result in service of the application, pursuant to section 89 of the Act.

In relation to the monetary claim, in the absence of service of the Notice of hearing package to each tenant, individually, I find that this portion of the application is dismissed with leave to reapply.

### Issue(s) to be Decided

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

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement requires the tenants to pay monthly rent of \$1,050.00 plus \$20.00 parking per month, due on the first day of each month. The tenants paid a security deposit of \$445.00 on May 4, 2004. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on October 3, 2011, a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of November 16, 2011, was served by posting to the tenant's door on that date, at approximately 5 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,403.10 within five 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 they filed an Application for Dispute Resolution within five days.

The tenants did make two \$500.00 rent payments; on October 3 and 12<sup>th</sup>, but did not pay the total rent owed. The tenants last had a zero balance owed in May, 2011.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on October 6, 2011.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 6, 2011, I find that the earliest effective date of the Notice is October 16, 2011.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 16, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End 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 have no evidence that the tenants exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after service to the tenants.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord may retain the filing fee costs from the deposit held in trust; therefore, effective this date the deposit held is \$395.00, plus interest of \$15.77.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit in the amount of \$50.00 in satisfaction of that fee.

The monetary claim is dismissed with leave to reapply.

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: November 30, 2011.

---

Residential Tenancy Branch