



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNR MNSD MNDC FF O

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, to keep all or part of a security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord appeared by conference call and gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered. The landlord provided affirmed testimony that the Notice of a Dispute Resolution Hearing was served on the tenants by registered mail on August 20, 2012. The landlord also provided a registered mail tracking number as evidence during the hearing. Section 90 of the *Act*, deems that documents sent by registered mail are deemed served five days after they are mailed. Based on the undisputed testimony of the landlord, I find the tenants were served in accordance with the *Act* on August 25, 2012.

### Preliminary and Procedural Matters

The landlord stated that rent for the month of August 2012, was paid late by the tenants on August 27, 2012. In addition, rent for the month of September 2012, was paid late on September 13, 2012. The outstanding utility bill as of August 20, 2012, the date of the application, in the amount of \$65.00 was also paid. As a result, the landlord withdrew all monetary portions of his application with the exception of suite cleaning of suite #2 in the amount of \$193.00 and the \$50.00 filing fee.

I dismiss the \$193.00 portion of the landlord's monetary claim with leave to reapply, as that pertains to a different tenancy agreement. As a result, the only monetary portion of

the landlord's application that I will be considering in this Decision, is the \$50.00 filing fee.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Should the landlord recover the filing fee?

### Background and Evidence

The written tenancy agreement was provided as evidence prior to the hearing. The fixed term tenancy began on April 15, 2012 and was to end twelve months later on April 1, 2012. Rent in the amount of \$1,325.00 is due on the first day of each month. A security deposit of \$662.50 was paid by the tenants at the start of the tenancy.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on August 9, 2012 by posting it to the tenant's door on the same date, which was witnessed by his spouse. The effective date on the Notice was not filled out. The Notice indicates that rent in the amount of \$1,325.00 was not paid on July 1, 2012, however, the landlord confirmed that the date was an error and should have read August 1, 2012. The Notice also indicates that unpaid utilities in the amount of \$52.69 were not paid following a written demand on August 1, 2012. The tenants did not dispute the Notice, and did not pay the rent within 5 days of receiving the Notice.

### Analysis

Based on the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession for unpaid rent or utilities** – I accept that the Notice was served on August 9, 2012 for unpaid rent and utilities. The Notice would have become effective 10 days after being served. Under the *Act*, Notices served by posting to the door of the tenants are deemed served three days after being posted. In the matter before me, the Notice was deemed served on August 12, 2012. The effective date under the *Act*, would be August 22, 2012. Pursuant to section 68 of the *Act*, **I find** the tenants knew or should have known the effective date on the Notice was 10 Days after the service of the Notice, and that the Notice related to August 1, 2012 rent versus the stated July 1, 2012 based on the date of the Notice which was August 9, 2012.

The tenants remain in the rental unit and did not pay the rent within 5 days of being served with the Notice in accordance with the *Act*. As a result, of not disputing the Notice or paying the rent within 5 days of being served with the Notice, the tenants are conclusively presumed under section 46 of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, August 22, 2012. Given the above and taking into account the landlord's application for an order of possession, I find that the landlord is entitled to an order of possession effective **two (2) days** after service on the tenants. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

As the landlord's application contained merit, I **grant** the recovery of the filing fee in the amount of **\$50.00**. I authorize that the landlord may deduct the \$50.00 from the security deposit of \$662.50, in full satisfaction, resulting a security deposit balance remaining of \$612.50. The remaining security deposit must be dealt with in accordance with the *Act* at the end of the tenancy.

#### Conclusion

I grant the landlord an order of possession effective **two (2) days** after service on the tenants. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 21, 2012

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Residential Tenancy Branch