



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNDC, 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, unpaid late and parking fees and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on June 22, 2013 the male tenant was personally served copies of the Application for Dispute Resolution and Notice of Hearing. A copy of a proof of service document, confirming service, was provided as evidence. The tenant signed the proof of service document, acknowledging that he received the hearing package on June 20, 2013 at 4:35. p.m.

The landlord supplied a copy of a Canada Post tracking number as evidence of service to the female tenant, at the rental unit address. The mail was sent on June 21, 2013.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; the male tenant was served on the day of personally delivery; the female tenant was served effective the 5<sup>th</sup> day after mailing. Neither tenant appeared at the hearing.

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

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

Is the landlord entitled to a monetary Order for unpaid rent, late fees and parking fees?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

The tenancy commenced on March 1, 2013 for a 6 month term. Rent is \$695.00 per month, due on the first day of each month. Clause 3 of the tenancy agreement supplied as evidence indicates that a \$20.00 late rent fee must be paid. The tenants signed a separate parking agreement for \$10.00 per month.

The landlord provided affirmed testimony that on June 2, 2013 a 10 day Notice to end tenancy for unpaid rent was posted to the door of the rental unit. The landlord supplied

a proof of service document signed by the agent who posted the Notice and the assistant manager who was present at the time of posting; June 2, 2013 at 2:10 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$695.00 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; June 15, 2013, unless the tenants filed an Application for Dispute Resolution within five days.

The landlord has claimed compensation for late fees, parking fees and unpaid rent for June and July 2013; totalling \$1,465.00. The landlord said that on July 2, 2013 the tenants made a \$1,200.00 payment; the 1<sup>st</sup> since the Notice had been issued. The tenants were given a receipt for use and occupancy.

The landlord is claiming \$265.00; the balance of July 2013 rent.

### 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 tenants received the Notice to End Tenancy on June 5, 2013.

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 tenants are deemed to have received this Notice on June 5, 2013, I find that the earliest effective date of the Notice is June 15, 2013.

In the absence of evidence to the contrary, I find that the tenants was served with a Notice to End Tenancy that required the tenants to vacate the rental unit on June 15, 2013, 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. The tenants did make a payment on July 2, 2013, but they failed to pay all of the June 2013 rent that was due within 5 days of receipt of the Notice.

Rent must be paid on the date it is due or the landlord can exercise their right to issue a Notice which requires full payment of rent within 5 days. Repeated late rent payments can also lead to eviction.

Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended effective June 15, 2013. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid July 2013 rent in the amount of \$265.00, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$315.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to filing fee costs.

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: July 18, 2013

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Residential Tenancy Branch

