



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 626700 BC LTD  
name suppressed for privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this teleconference hearing scheduled for 9:00 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony and make submissions. The hearing proceeded without the tenants' presence and lasted until 9:30 a.m.

### Preliminary Issue: Service of Documents

The landlord's agent provided one page of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by way of fax after the hearing of this matter. The agent also testified that he personally served that notice to the tenant ROK indicating an outstanding amount in rent of \$1000.00. I accept the agent's testimony and pursuant to section 88 of the *Act*, I find the tenant ROK was duly served in person on September 10, 2014.

The Residential Tenancy Branch policy guidelines relating to service indicate that, where a landlord is personally serving a tenant, the landlord must actually hand a copy of the document to the tenant and provide a copy for each co-tenant. The landlord did not provide a copy of the 10 Day Notice for each co-tenant named in this proceeding.

The landlord's agent testified that he sent to the tenants a copy of the landlord's dispute resolution hearing package by registered mail on September 24, 2014. The landlord provided a copy of the Canada Post customer receipt containing the tracking number to confirm this mailing. I note that this receipt in evidence identifies tenants ROK and RYK. Based on the sworn testimony of the agent and the registered mail receipt provided, I find that the tenants ROK and RYK have received the landlord's dispute resolution hearing package and, in accordance with section 89 and 90 of the Act, the tenants were deemed served with the landlord's dispute resolution hearing package on September 29, 2014, the fifth day after the registered mailing.

I find that there would be no denial of natural justice in proceeding with this hearing with respect to tenants ROK and RYK however I find that there is not sufficient proof of service to proceed with respect to tenant SW. The claim against tenant SW is dismissed.

#### Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

The landlord's agent testified that this tenancy began on April 1, 2014 with a signed agreement to pay \$800.00 per month on the 1<sup>st</sup> day of each month and a \$400.00 security deposit. He testified that the tenants did not pay full rent in July 2014. Receipts submitted by the landlord indicate that the tenants paid only partial rent amounts for July and August. He further testified that he had not received any rent payment, partial or otherwise, for September, October or November 2014. The tenants are, according to the testimony of the landlord's agent, currently residing in the rental unit. The landlord's agent indicates that he has made several attempts to arrange payment and has provided several notices to end tenancy. The tenants did not attend this hearing to dispute the landlord's evidence.

The landlord provided documentary evidence in the form of receipts for payments from May to August that reflect a tenancy agreement with rent to be paid on or about the first of the month in the amount of \$800.00. The landlord requested a monetary award for \$1800.00 in their application. At the hearing, the landlord's agent sought to amend that

application requesting a monetary award for \$3400.00 to include rent unpaid since the application for dispute resolution had been made. The landlord's oral and written evidence indicates the following payments and outstanding rent;

<b>Item</b>	<b>Amount</b>
Outstanding Rent July, 2014 (\$800-\$400 paid)	\$400.00
Outstanding Rent August, 2014 (\$800-\$200 paid)	\$600.00
Outstanding Rent September, 2014	\$800.00
Outstanding Rent October, 2014	\$800.00
Outstanding Rent November, 2014	\$800.00
<b>Total Rent Outstanding</b>	<b>\$3,400.00</b>

### Analysis

The tenants failed to pay the rent identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. This required the tenants to vacate the premises by September 20, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) and anyone on the rental premises do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

There is evidence of the rental agreement between the tenants ROK and RYK and landlord in the amount of \$800.00 per month. The landlord's dispute resolution application package listed tenants ROK, RYK and SW. I note that while the Notice to End Tenancy included all three tenants on this tenancy, it was tenant ROK who was served with the Notice to End Tenancy in person. I further note that, while all three tenants were named in this application for dispute resolution, the documentary evidence only reflects proof of service of the application for dispute resolution and dispute resolution hearing package to tenants ROK and RYK. The landlord's agent was unable to confirm that SW was indeed a party to the tenancy agreement or any other persuasive evidence to include her as a Respondent in this application. I find that ROK and RYK are considered tenants duly served with the landlord's application for dispute resolution and are responsible for unpaid rent due to the landlord.

There is evidence, in the form of receipts and testimony in this hearing, that there is outstanding rent owing from July 2014. There is further undisputed evidence that the tenants did not pay any rent for September, October and November 2014.

The landlord's evidence shows that the tenants paid partial rent amounts of \$400.00 and \$200.00 respectively in July and August. The landlord's agent testified that the tenants are still residing in the suite (where they are subject to the tenancy agreement) and that no rent has been paid for the remainder of July and August or for September, October or November. Given this undisputed evidence, I find the tenants owe the landlord for outstanding rent in the amount of \$3,400.00.

The landlord's agent testified that the landlord continues to hold the tenant's security deposit of \$400.00 since April, 2014. The landlord applied to retain that deposit. Using the provisions of section 38 and 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application. The outstanding rent and filing fee, reduced by the amount of the security deposit, will result in a monetary order on behalf of the landlord in the amount of \$3050.00.

### Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms against Tenants ROK and RYK, which allows the landlord to obtain unpaid rent and the filing fee and to retain the security deposit.

Item	Amount
Outstanding Rent July, 2014	\$400.00
Outstanding Rent August, 2014	\$600.00
Outstanding Rent September, 2014	\$800.00
Outstanding Rent October, 2014	\$800.00
Outstanding Rent November, 2014	\$800.00
Less Security Deposit	\$400.00
Filing Fee	\$50.00
<b>Total Monetary Order</b>	<b>\$3,050.00</b>

The landlord is provided with these monetary Orders in the above terms against Tenant ROK and Tenant RYK and these tenants must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 26, 2014

---

Residential Tenancy Branch

