



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1350 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenants with the dispute resolution package on 12 December 2014 by registered mail. The landlord provided me with Canada Post tracking numbers that showed the same. The tenants, however, did not pick up the registered mailings. The landlord testified that he saw the tenants intentionally leave the pickup slips for these mailings behind when they attended at the rental unit to pick up their mail on 17 and 19 December 2014. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenants with the 10 Day Notice on 4 December 2014 by leaving the notice with the tenant BP's mother. On the 10 Day Notice, the landlord also indicates that he posted a copy of the 10 Day Notice to the tenants' door.

On the basis of this evidence, I am satisfied that the tenants were deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

*Preliminary Issue – Evidence Received After Hearing Concluded*

At the commencement of the hearing, the landlord reported that he forgot to send his evidence package to the Residential Tenancy Branch. The landlord testified that he sent all of this evidence to the tenants with the rest of the dispute resolution package. As the tenants have been properly served with all of this evidence, there is no prejudice to the tenants in my consideration of this evidence. I allowed the landlord to submit copies of the documents for consideration after the end of 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 award for unpaid rent and losses arising out of this tenancy? 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

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began in 2011. When the landlord purchased the residential property, the tenants were already residing therein. The landlord and tenants entered into a series of successive, fixed-term tenancies. The last of these tenancies began 1 July 2014. Monthly rent of \$1,500.00 was due on the first. The landlord continues to hold the tenants' security deposit of \$750.00, which the landlord believes was paid in the summer of 2011.

On 3 December 2014, the landlord received a handwritten note from the tenant DI. The note set out that the tenants were leaving the rental unit and not paying any rent for December. In addition, the tenants alleged that the landlord had breached the tenancy agreement and that the rental unit was unsafe.

On 3 December 2014, the landlord wrote to the tenants. In this letter, the landlord set out why the tenants' notice to end tenancy was ineffective and asked that the tenants pay December's rent in full.

On 4 December 2014, the landlord issued the 10 Day Notice. The 10 Day Notice stated that the tenants failed to pay \$1,500.00 of rent that was due on 1 December 2014. The 10 Day Notice provided an effective date of 14 December 2014. In addition to leaving the 10 Day Notice at the residential unit, the landlord texted the tenants to let them know the 10 Day Notice had been served.

At an inspection of the rental unit on 4 December 2014, the landlord noted the tenants were still occupying the rental unit and that it appeared that the tenants were in the process of packing for a move.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by 17 December 2014, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenants have unpaid rental arrears totaling \$1,500.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord/s applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$800.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$1,500.00
Offset Security Deposit	-750.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$800.00</b>

The landlord is provided with a formal copy of an order of possession. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: January 19, 2015

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Residential Tenancy Branch

