



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlords also applied: to keep the Tenants' security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee for the cost of making the Application.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlord was accompanied by the building manager who did not provide any testimony during the hearing. There was no appearance by the Tenants during the 12 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

### Preliminary Issues

The Landlord testified that she served each Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on January 16, 2015, pursuant to Section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking numbers as evidence for this method of service during the hearing which was noted on the inside cover of the file.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on January 21, 2015 pursuant to the Act.

The Landlord explained at the start of the hearing that the Tenant had made partial payments towards unpaid rent a few days prior to this hearing. As a result, the Tenant was issued with receipts for these payments and the Landlord testified that she did not have sufficient time to submit them into written evidence prior to this hearing. As a result, I allowed the Landlord, under Rule 3.17 of the Rules of Procedure, to provide a copy of the rent receipts during the hearing as these had already been provided to the Tenants.

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision as follows.

#### 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 for February, 2015 and two late rent fees?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim?

#### Background and Evidence

The Landlord testified that this tenancy started on October 20, 2013 for a fixed term which ended on October 31, 2014. After this time the tenancy continued on a month to month basis. The parties completed a written tenancy agreement and currently rent is payable by the Tenants in the amount of \$1,486.00 on the first day of each month. The Tenants paid the Landlord a \$725.00 security deposit on September 12, 2013.

The Landlord testified that the Tenants failed to pay rent on January 1, 2015. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 5, 2015 by attaching it to their door. The Notice was provided into written evidence and shows an expected date of vacancy of January 15, 2015 due to \$1,486.00 in unpaid rent due on January 1, 2015.

The Landlord testified that the Tenants made two partial payments for the full amount of January 2015 rent by the end of the month. One payment was made on January 15, 2015 and the other one was made on January 29, 2015. However, as the payments were made outside of the five day time limit the Tenants had to make full payment, the Landlord issued the Tenants with two rent receipts which indicated that the payment was being accepted for use and occupancy only. The Landlord testified that she

explained to the Tenant that she was still seeking to end the tenancy because the Tenants were habitually late paying rent. The Landlord testified that as a result, the Tenants failed to pay rent for February 2015 in the amount of \$1,486.00 which the Landlord now seeks to recover as she had claimed for anticipated February 2015 rent loss in the Application.

The Landlord drew my attention to section 6 of the signed written tenancy agreement titled 'Arrears', which requires the Tenants to pay a late rent fee in the amount of \$25.00. As a result, the Landlord seeks to recover the two late rent fees for January and February 2015 in the amount of \$25.00 each, as well as an Order of Possession.

### Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act.

I also accept the Landlord's evidence that the Notice was served to the Tenants by attaching it to their door on January 5, 2014. Section 90(c) of the Act allows documents served in this manner to be deemed to be received three days later. Therefore, I find that the Tenants received the Notice on January 8, 2015. Therefore, the Tenants had until January 13, 2015 to pay the rent or make an Application to dispute the Notice.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

I also accept the Landlord informed the Tenants that the acceptance of the two rent payments for the January 2015 rent outside of the five day time limit would not re-instate the tenancy.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the Notice. Therefore, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant as the effective vacancy date of the Notice has now passed.

Based on the written and verbal evidence of the Landlord above, and in the absence of any evidence from the Tenants to dispute this, I find that the Landlord is also entitled to unpaid rent for February 2015 in the amount of \$1,486.00.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Therefore, in accordance with section 6 of the signed tenancy agreement between the parties, I find that there is sufficient evidence to prove that the Landlord is entitled to the late rent fees that relate to both January and February 2015.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$50.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$1,586.00 (\$1,486.00 + \$50.00 + \$50.00).

As the Landlord already holds the Tenants' \$725.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$861.00.

### Conclusion

The Tenants have failed to pay rent. As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep the Tenants' security deposit and is also granted a Monetary Order for unpaid rent and two late fees in the amount **\$861.00**, pursuant to Section 67 of the Act. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of the orders for service and enforcement are attached to the Landlord's copy of this decision.

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: February 02, 2015

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Residential Tenancy Branch

