



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OKANAGAN STRATA MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by conference call in response to a Landlords' 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 Tenant's security deposit and to recover the filing fee from the Tenant for the cost of having to make the Application.

### Preliminary Issues

An agent for the both Landlords named on the Application appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance for the Tenant during the 18 minute duration of the hearing or any submission of evidence prior to the hearing. As a result, I focused my attention to the service of the documents related to this hearing by the Landlord.

The Landlords' agent testified that she personally served the Tenant with a copy of the Application and the Notice of Hearing documents on February 24, 2015 in the presence of a witness. In the absence of the Tenant or any other evidence to dispute this, I accept the oral evidence that the Tenant was served with the required documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

During the conclusion of the hearing, the Landlords' agent decided that it was better for her to deal with the Tenant's security deposit at the end of the tenancy. Therefore, the Landlords' agent withdrew this portion of the Landlords' monetary claim.

### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for rental arrears?

### Background and Evidence

The Landlords' agent testified that this tenancy started on September 15, 2014 on a month to month basis. Rent under the written tenancy agreement is payable by the Tenant in the amount of \$800.00 on the first day of each month. The Tenant paid the Landlords a security deposit of \$400.00 at the start of the tenancy.

The Landlords' agent testified that the Tenant failed to pay rent for January and February 2015. As a result, the Landlords' agent personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 4, 2015. The Notice, which was provided into written evidence, shows an expected date of vacancy of February 14, 2015 due to \$1,600.00 in unpaid rent due by February 1, 2015.

The Landlords' agent explained that after the Tenant was served the Notice, the Tenant paid \$750.00 on February 20, 2015 towards the debt. The Landlords' agent also testified that the Tenant had failed to pay rent for March 2015. However, the Tenant made another partial payment of \$400.00 on March 10, 2015. The Landlords' agent explained that currently, the Tenant was in rental arrears for the amount of \$1,250.00.

The Landlords' agent explained that they had talks with the Tenant about a payment plan for the rental arrears. However, at this moment in time, she was still seeking the Order of Possession and a Monetary Order as the Tenant is still in rental arrears.

### Analysis

I have carefully considered the undisputed affirmed testimony and the written evidence of the Landlords' agent in this decision as follows.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. 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.

Having examined the copy of the Notice provided into written evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlords' agent's undisputed evidence that the Notice was personally served to the Tenant on February 4, 2015.

Therefore, under the provisions of the Notice and the Act, the Tenant had until February 9, 2014 to pay the rent or make an Application to dispute the Notice, neither of which the Tenant did.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed, and the Tenant still occupies the rental unit, the Landlord is granted an Order of Possession which is effective two days after service on the Tenant. The Landlord is also entitled to recover the rental arrears in the amount of **\$1,250.00** claimed.

As the Landlord has been successful in this matter, the Landlord is also awarded the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlords is **\$1,300.00**.

### Conclusion

The Tenant has breached the Act by failing to pay rent under this tenancy. As a result, the Landlords are granted an Order of Possession effective **two days after service on the Tenant**. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court as an order of that court.

The Landlords are also granted a Monetary Order for the remaining unpaid rent and the filing fee in the amount **\$1,300.00**, pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The Landlords' Application to keep the Tenant's security deposit was withdrawn. Copies of both orders for service and enforcement are attached to the Landlords' 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: March 23, 2015

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Residential Tenancy Branch

