



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the call, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, despite being individually served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on February 25, 2015, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenants were served on that date and in that manner and orally provided 2 tracking numbers assigned by Canada Post, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord withdrew the applications for a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

### Background and Evidence

The landlord's agent testified that this tenancy began on September 1, 2010 and is now on a month-to-month basis. The tenants still reside in the rental unit. Rent in the amount of \$780.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are currently no rental arrears. On August 25, 2010 the landlord collected a security deposit from the tenants in the amount of \$385.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenants fell into arrears of rent in February, 2015 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. The notice is dated February 6, 2015 and contains an expected date of vacancy of February 16, 2015 for unpaid rent in the amount of \$780.00 that was due on February 1, 2015. The notice was served by the building manager who posted it to the door of the rental unit on February 6, 2015 and a copy of a Proof of Service document prepared by that person has also been provided. The tenants paid the outstanding rent on March 1, 2015 as well as rent in full for the month of March. The landlord issued receipts for the 2 payments that were marked, "For Use and Occupancy Only."

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice, and the landlord seeks an Order of Possession and a monetary order for recovery of the filing fee.

The landlord was permitted to provide to me by way of facsimile a copy of the receipts issued to the tenants for the payments made on March 1, 2015 after the hearing concluded, which have been received.

### Analysis

The *Residential Tenancy Act* is clear with respect to the payment of rent and the consequences for not paying rent on time. Once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I am satisfied that the landlord served the notice on February 6, 2015 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or February 9, 2015. The tenants did not pay the rent in full by February 14, 2015 and are therefore conclusively presumed to have accepted the end of the tenancy. The effective date of vacancy contained in the notice is February 16, 2015 which is less than the 10 days prescribed by the *Act*, however the *Act* also states that incorrect effective dates contained in a notice are changed to the nearest date that complies with the *Act*, which I find is February 19, 2015. The tenants didn't move out of the rental unit, however the tenants

paid the outstanding rent on March 1, 2015 and rent in full for the following month. I have reviewed the receipts given by the landlord for those payments, and I am satisfied that the landlord has made it clear to the tenants that the acceptance of rent does not serve to reinstate the tenancy.

I find that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$50.00.

These orders are final and binding and may be enforced.

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 31, 2015

---

Residential Tenancy Branch

