



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlords and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and both parties confirmed receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

### Background and Evidence

The written tenancy agreement submitted by the landlords shows that this fixed term tenancy began on October 30, 2014, monthly rent is \$750.00, and a security deposit of \$375.00 was paid by the tenant at the beginning of the tenancy.

The landlord stated that on March 9, 2015, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$750.00 as of March 1, 2015. The effective vacancy date listed on the Notice was March 19, 2015.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that the tenant paid the full March rent on March 17, 2015; however, the tenant has not paid the rent for April 2015, as he placed a stop payment on the cheque.

The landlord's monetary claim in their application filed was \$1875.00, comprised of the unpaid rent for March of \$750.00, unpaid rent for April of \$750.00, and the security deposit of \$375.00. In response to my question, the landlord stated that they were told to add the amount of the security deposit they currently retain by someone working at the government agent's office, but did not understand why it should be included. As the tenant paid rent for March, the landlords are now seeking compensation for the April rent, according to the landlords.

Evidence submitted by the tenant shows a receipt from the landlords for the March 2015 rent payment, on a use and occupancy basis.

*Tenant's response-*

The tenant stated that he believed he was served the Notice on March 11, 2015, not March 9, 2015.

Although I have no evidence before me that the tenant applied to dispute the Notice, the tenant submitted that he intended on filing the application to dispute the Notice by having the paperwork ready; however, when he attended the government agent's office and through a telephone consult with the Residential Tenancy Branch ("RTB"), he was informed that he did not need to file the application and needed to only submit his evidence, according to the tenant.

The tenant acknowledged that he placed a stop payment on his cheque for the April rent, after receiving legal advice to do so. In explanation, the tenant submitted that he was informed by the landlords that they intended on selling the rental unit and that he had to leave. The tenant submitted further that he was therefore entitled to withhold the rent for April.

The tenant submitted further that he was hospitalized at the time the rent for March was due, and had informed the landlords that he would be paying the rent for March as soon as he was released from the hospital. The tenant submitted further that he was the victim of an online scam when trying to raise the funds for the March rent, further having to borrow any money he could to pay the rent.

The tenant submitted further that the real reason the landlords want him to move is so that their son could move into the rental unit.

*Landlords' rebuttal-*

The landlords denied their son was intending on moving into the rental unit and the issue was unpaid rent.

It is noted that the tenant submitted that he is vacating the rental unit over the weekend following this hearing, and would clean the rental unit early in the next week. The parties agreed that the landlords would be issued an order of possession for the rental unit, leaving the matter of April's rent as the only remaining issue.

Analysis

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Order of possession for the rental unit-*

**Settled Agreement**

The tenant and the landlords agreed to a mutual settlement as to the issue of the order of possession for the rental unit requested by the landlords, under the following terms:

1. The tenant agrees to vacate the rental unit by April 26, 2015; and
2. The tenant understands the landlords will be issued an order of possession for the rental unit, based upon the settled agreement, and that if the tenant fails to vacate the rental unit by April 26, 2015, the landlords may serve the order of possession on the tenant for enforcement purposes.

*Monetary claim for compensation for April 2015-*

As to the matter of the landlords' claim for unpaid rent for April, based upon the landlords' evidence, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay all the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service, which in this case I accept the landlords' evidence that the tenant was served the Notice on March 9, 2015. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, March 19, 2015.

As I have determined that the tenancy ended on the effective date of the Notice, or March 19, 2015, I find the tenant is now over holding in the rental unit, causing the landlords to suffer a loss of rent revenue for April, as they were compensated through the end of March 2015.

Pursuant to section 57 of the Act, I therefore find the landlords are entitled to the equivalent of the rent for the entire month of April, as the tenant confirmed he would be cleaning the rental unit the last few days of April.

I therefore find that the landlords are entitled to a monetary award of \$750.00 for loss of rent revenue for April 2015.

I have not granted the landlords recovery of their filing fee as the landlord stated at the hearing they were not interested in costs for the hearing.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$750.00, which is enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

#### Conclusion

The landlords' application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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: April 24, 2015

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Residential Tenancy Branch

