



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPR, MNR

### Introduction

In response to the landlord's application for an order of possession and a monetary order as compensation for unpaid rent, pursuant to an *ex parte* / direct request proceeding an Interim Decision was issued by date of March 16, 2015. In the Interim Decision the Adjudicator noted in part:

The residential tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice as a landlord cannot ask for rent before the day it is due.

As the Direct Request process is an *ex parte* process that does not allow for the clarification of facts, I find that I am not able to confirm when the monthly rent is due and that this can only be clarified in a participatory hearing.

Following from the above, the Adjudicator ordered that the direct request proceeding be reconvened in accordance with section 74 of the Act as a participatory hearing, and in the Interim Decision it is further stated in part:

**Notices of Reconvened Hearing are enclosed with this Interim Decision for the applicant to serve, with all other required documents, upon the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing.

The participatory hearing was scheduled to commence at 9:30 a.m. by way of telephone conference call on April 27, 2015. Both parties were present at that time and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the term of tenancy is from April 01, 2014 to March 31, 2015. Monthly rent is \$1,100.00, and the parties agree that it is due and payable in advance on the first day of each month. A security deposit of \$550.00 was collected.

Arising from rent which remained unpaid when due on March 01, 2015, the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 02, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is March 12, 2015. Subsequently, the tenants made no further payment toward rent and they continue to reside in the unit.

Analysis

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated March 02, 2015. The tenants did not pay the full amount of outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the landlord has established a claim of **\$2,200.00**, and I hereby issue a **monetary order** in favour of the landlord to that effect as follows:

\$1,100.00: *unpaid rent for March*

\$1,100.00: *unpaid rent for April*

As the end of tenancy nears, the attention of the parties is drawn to the following particular sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,200.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

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 27, 2015

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Residential Tenancy Branch

