



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, SS, ET (Landlords' Application)  
CNR (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlords on May 7, 2015 and by the Tenant on May 5, 2015.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and to recover the filing fee from the Tenant. The Landlord also applied to serve documents in a different way than required by the *Residential Tenancy Act* (the "Act"), and for an early end to the tenancy. The Tenant applied to cancel the notice to end tenancy.

The Landlord who was also an agent for the Landlord company named on both Applications appeared for the hearing with the owner of the rental unit. The Tenant also appeared for the hearing. The Landlord and Tenant provided affirmed testimony during the hearing and both parties submitted a copy of the notice to end tenancy into written evidence.

The Landlord confirmed receipt of the Tenant's Application by personal service pursuant to Section 89(1) (a) of the Act. The Landlord testified that he had served his Application by registered mail to the Tenant. The Landlord provided a copy of the Canada Post tracking number and receipt as evidence for this method of service. The Tenant testified that he had received a notice in the mail informing him that there was a letter for him to collect; however, the Tenant did not collect it.

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 Tenant was deemed served with the Landlords' Application on May 16, 2015.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the evidence provided.

### Preliminary Issues

During the hearing the Landlord confirmed that his Application to serve documents in a different way than required by the Act was a clerical error. The Landlord also confirmed that he did not need an Order of Possession for an early end of tenancy as he had already requested to end the tenancy for unpaid rent. Therefore, the Landlord withdrew both of these portions of his Application.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Tenant entitled to cancel the notice to end tenancy?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security and pet damage deposits (the "Deposits") in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The parties agreed that this tenancy started on March 1, 2013 on a month to month basis. A written tenancy agreement was completed and provided into written evidence. The Tenant paid the previous Landlord a total of \$725.00 for the Deposits before the tenancy started which was provided to the current Landlords who retain these monies. Both parties also confirmed that rent is payable by the Tenant for \$725.00 on the first day of each month.

The Landlord testified that the Tenant had made partial payments of rent starting in November 2014. By the end of April 2015, the Tenant was in rental arrears for the amount of \$1,505.00. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The Landlord posted the Notice on the Tenant's door on April 28, 2015.

The Tenant confirmed receipt of the Notice on the same day it was posted to his door. The Notice shows an expected date of vacancy of May 10, 2015 due to \$1,505.00 in unpaid rent due on April 1, 2015. The Landlord continued to testify that the Tenant failed to pay rent for May, 2015 and as result this increased the rental arrears to \$2,230.00.

The Landlord testified that since this time the Tenant had made several small partial payments of rent totaling \$970.00. Therefore, the amount of rent the Landlord is currently seeking from the Tenant is **\$1,260.00** (\$2,230.00 - \$970.00) as well as an Order of Possession to end the tenancy.

The Tenant did not dispute this and confirmed the amount of rental arrears. The Tenant explained that he had habitually paid his rent to the owner of the rental unit as and when he got paid for work and this became the norm during the tenancy. However, the Tenant understood that his rent was required to be paid on the first of every month and testified that he was working hard to pay the current rental arrears to the Landlords.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the Tenant has authority to not pay it under the Act. In this case, I accept the Landlord's undisputed evidence that the Tenant has failed to pay the outstanding rental arrears in the amount of **\$1,260.00**.

Although the Tenant made an Application to dispute the Notice, the Tenant provided no grounds or authority under the Act to not pay rent. As a result, I find that the Landlords are entitled to an Order of Possession to end the tenancy. As the vacancy date on the Notice has now passed, the Order of Possession is 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 of British Columbia as an order of that court.

The Landlords are also entitled to unpaid rent in the amount of \$1,260.00. As the Landlords have been successful in this matter, the Landlords are 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 Tenant to the Landlords is **\$1,310.00**.

As the Landlords already hold **\$725.00** of the Tenant's Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$585.00**. 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.

### Conclusion

The Tenant has breached the Act by failing to pay full rent under the tenancy agreement. As a result, the Landlords are granted an Order of Possession effective two

days after service on the Tenant. The Landlords are allowed to keep the Tenant's security deposit and are issued with a Monetary Order for the remaining balance of \$585.00.

The Tenant failed to prove that he had authority to not pay rent under the tenancy agreement. Therefore, the Tenant's Application is dismissed without leave to re-apply.

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: May 26, 2015

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Residential Tenancy Branch

