



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding D & S Duperron Property Holdings Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, FF

### Introduction

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

The landlord attended; the tenants did not attend the telephone conference call hearing.

The landlord gave evidence that they served each tenant with their application for dispute resolution and notice of hearing by registered mail on May 17, 2015. The landlord supplied the Canada Post receipts showing the tracking numbers of the registered mail and tracking records showing that tenant "KD" signed for each registered mail envelope.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The landlord was 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.

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.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on May 5, 2015, monthly rent is \$890.00, and a security deposit of \$445.00 was paid by the tenants at the beginning of the tenancy. The landlord submitted a copy of the written tenancy agreement.

The landlord gave evidence that on April 14, 2015, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"), by attaching it to the tenants' door, listing unpaid rent of \$1200.00 as of April 1, 2015. The effective vacancy date listed on the Notice was April 24, 2015. The landlord submitted that although the Notice shows a date of April 1, 2015, this was a typographical error, as it was actually served to the tenants on April 14, 2015. The landlord submitted a copy of the Notice.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on April 17, 2015, and the effective move out date is automatically changed to April 27, 2015, pursuant to section 53 of the Act.

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

The landlord submitted that the tenants made payments towards the rent deficiency of \$850.00 on April 26, 2015, \$900.00 on May 21 and \$700.00 on May 27, 2015, and as of the date of the hearing, the tenants owed \$550.00 in unpaid rent. The landlord submitted further that the tenants also owed \$75.00 in late fees, or \$25.00 each for the months of April, May, and June 2015. The landlord submitted further that the tenants were issued receipts showing the payment of rent was for occupancy only. The landlord submitted a copy of a receipt to the tenants.

The landlord's original monetary claim was \$1300.00.

I have no evidence before me that the tenants applied to dispute the Notice.

### Analysis

I find the landlord submitted sufficient evidence to prove that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within 5 days of service and 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.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service of the order upon the tenants.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I also find that the landlord is entitled to a monetary award of \$600.00, comprised of \$550.00 for a loss of rent revenue for the rent deficiency as the tenants are now over holding in the rental unit rent beyond the effective end of tenancy date of April 27, 2015, and the \$50.00 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$445.00 in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$155.00, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord 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 tenants are advised that costs of such enforcement are recoverable from the tenants.

I have not awarded the landlord late fees as this application dealt only with the landlord's request for a monetary order for unpaid rent and an order of possession for the rental unit. The landlord is at liberty to apply for the late fees with another application for dispute resolution.

### Conclusion

The landlord's 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: June 26, 2015

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Residential Tenancy Branch

