



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**OPR, OPB, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent and cause, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on May 22, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the application. A Canada Post tracking number for each tenant was provided as evidence of service.

These documents are deemed to have been served effective May 27, 2015 in accordance with section 89 and 90 of the Act; however the tenants did not appear at the hearing.

On May 23, 2015 the male tenant was again served, at the rental unit. The landlord handed him a copy of the hearing documents and evidence.

### Preliminary Matters

A one month Notice ending tenancy for cause was not before me.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

The tenancy commenced on August 1, 2014. Rent is \$2,200.00 per month due on the first day of each month. A security deposit in the sum of \$1,100.00 as paid. A copy of the tenancy agreement shows some initials by the male tenant. The copy signed by the two co-tenants was not given to the landlord. The landlord testified that the male and female were each tenants.

The landlord stated that on May 6, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of May 17, 2015, was personally given to the female tenant. Service occurred at 7:15 p.m. at the rental unit. A witness, A.P. was present and signed a proof of service document confirming service. The tenant signed the proof of service, confirming receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,300.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord said she inadvertently included a \$550.00 pet deposit as unpaid rent on the Notice. The total amount of rent owed May 1, 2015 was \$2,750.00. On May 7, 2015 the tenants paid \$700.00 for the balance of May rent owed. The sum of rent outstanding was then reduced to \$2,050.00.

The landlord provided a ledger setting out rent payments made since August 2014. From August 2014 to May 2015 the tenants paid \$19,950.00 of \$22,000.00 rent owed. In September 2014 the landlord allowed a single \$200.00 rent reduction. Other than September 2014, the landlord has not allowed the tenants to make deductions from rent owed, although the tenants have done so, believing they were entitled to deductions for work completed at the rental unit.

The landlord has claimed compensation in the sum of \$2,050.00 for rent owed since August 2014 to April 2015. The tenants have paid June and July 2015 rent. The landlord did not tell the tenants she was not proceeding with this hearing.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenants received the Notice to end tenancy on May 6, 2015. .

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on May 6, 2015, I find that the earliest effective date of the Notice is May 16, 2015.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on May 17, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants paid the balance of May 2015 rent owed but did not pay the balance of rent owed since August 2014. The tenants were at liberty to dispute the Notice and bring forward evidence that rent had been paid. As the tenants did not exercise their right to dispute the Notice I find, pursuant to section 46(5) of the Act that the tenants accepted that the tenancy has ended on the effective date of the Notice; May 17, 2015.

The landlord served the tenants with Notice of this hearing on May 27, 2015 and did not notify the tenants that the hearing would not proceed. I find that payments made since May 2015 were for use and occupancy after the effective date of the Notice.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,050.00 between August 2014 and April 2015 in the sum of \$2,050.00 and that the landlord is entitled to compensation in that amount.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$1,100.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,000.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 06, 2015

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Residential Tenancy Branch

