



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPB MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent, for an order of possession for breach of the tenancy agreement, for a monetary order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) and Application for Dispute Resolution (the “Application”) were considered. The landlord testified under oath that she personally served the tenants on May 26, 2015 at 8pm at the rental unit with the Notice of Hearing and Application. The landlord called witness G.E. who confirmed under oath that he was present when the landlord served the tenants on May 26, 2015 at 8pm at the rental unit. As a result, I am satisfied that the tenants were sufficiently served in accordance with the Act.

During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The landlord testified that she served her documentary evidence on the tenants personally on June 22, 2015 at the rental unit. The landlord presented witness G.E. who confirmed that information. As a result, I am satisfied that the tenants were sufficiently served with the landlord’s documentary evidence.

### Preliminary and Procedural Matter

At the outset of the hearing, the landlord testified that since filing her application for unpaid rent for May 2015 of \$300, the tenants have since failed to pay \$2,000 rent for June 2015 and \$2,000 for July 2015. As a result, the landlord requested to amend the application to include rent owed for June 2015 and July 2015. The landlord also stated that the tenants continue to occupy the rental unit.

I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware that rent is due pursuant to the tenancy agreement, I amend the application to \$4,300.00, which consists of \$300 for unpaid May 2015 rent, \$2,000 for unpaid June 2015 rent, and \$2000 for unpaid July 2015 rent pursuant to section 64(3) of the *Act*. Given that two 10 Day Notices were also submitted in evidence, I amend the landlord's application pursuant to section 64(3) of the *Act* to include the second 10 Day Notice dated June 5, 2015 which the landlord testified was posted to the tenant's door on the same date.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the filing fee under the *Act*?

### Background and Evidence

The landlord testified that a month to month tenancy began on February 1, 2015, which was supported by the tenancy agreement submitted in evidence. Monthly rent in the amount of \$2,000 is due on the first day of each month. A security deposit of \$1,000 was paid by tenants at the start of the tenancy, which the landlord continues to hold.

The landlord testified that she served the first 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") but forgot to date that 10 Day Notice. The landlord also submitted a second 10 Day Notice, dated June 5, 2015 which indicates that \$2,000 was due on June 1, 2015, and that \$300 as due for May. The landlord testified that she served the 10 Day Notice dated June 5, 2015 by posting it to the door of the tenants on June 5, 2015. The tenants did not dispute the first or second 10 Day Notice.

The landlord's monetary claim is for \$4,300 which is comprised of the following:

1. Unpaid May 2015 rent	\$300
2. Unpaid June 2015 rent	\$2000
3. Unpaid July 2015 rent	\$2000
<b>TOTAL</b>	<b>\$4,300</b>

### Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** – I accept the landlord's undisputed testimony that the tenants continue to occupy the rental unit and did not dispute the 10 Day Notice dated June 5, 2015. By serving that 10 Day Notice on the tenants' door on June 5, 2015, the tenants are deemed served pursuant to section 90 of the *Act* on June 9, 2015. The tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the amended effective date of the 10 Day Notice, which was June 19, 2015. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

I do not find it necessary to consider the landlord's application for an order of possession for breach of the tenancy agreement, as the landlord was successful for an order of possession based on unpaid rent.

**Claim for unpaid rent** – I accept the landlord's undisputed testimony that the tenants have failed to pay a total of \$4,300 in rent comprised of \$300 owing for May, \$2000 owing for June and \$2000 owing for July of 2015. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. As the tenants continue to occupy the rental unit, the landlord will not regain possession of the rental unit until after service of the order of possession. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$4,300** in unpaid rent as described above.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50** filing fee. The landlord continues to hold the tenants' security deposit of \$1,000.

**I ORDER** the landlord to retain the tenant's security deposit of \$1,000 in full, in partial satisfaction of the landlord's total monetary claim. This results in a net amount owing by the tenants to the landlord in the amount of \$3,350.

**Monetary Order – I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the net amount of **\$3,350** comprised \$4,300 in unpaid rent, plus the recovery of the \$50 filing fee, less the \$1,000 security deposit that the landlord has been ordered to retain in partial satisfaction of the landlord's total monetary claim.

### Conclusion

The landlord has been granted an order of possession effective **two (2) days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 67 in the net amount of \$3,350. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 9, 2015

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Residential Tenancy Branch

