



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD 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 a monetary order for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, 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 he served each of the tenants by registered mail, each with their own package and tracking number on May 27, 2015 and that both packages contained documentary evidence. A tracking number was provided orally during the hearing, and confirmed with the Canada Post website that both packages were returned to the landlord, the sender, on June 18, 2015. The landlord testified that both packages were marked by Canada Post as “Unclaimed”. Section 90 of the Act indicates that documents served by registered mail are deemed served 5 days after they are mailed. As a result of the above, I find the tenants were deemed served as of June 1, 2015, which is 5 days after the registered mail packages were mailed, according to the Canada Post website and the landlord’s testimony. I am satisfied that the tenants were sufficiently served with the Notice of Hearing, Application and documentary evidence in accordance with the Act. In addition, I note that refusal of service, or to accept a registered mail package does not constitute grounds for a review consideration.

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.

### Preliminary and Procedural Matter

The landlord verbally requested to amend his application to include a claim for unpaid utilities; however, I find that as the landlord's application details did not specifically mention a claim for unpaid utilities or a specific amount of unpaid utilities in the details of dispute, that it would not be procedurally fair to the respondent tenants, and contrary to the principles of natural justice to address unpaid utilities at this hearing. As a result, the landlord is at liberty to reapply for unpaid utilities pursuant to the timelines as set out in the Act.

### 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 November 15, 2013. Monthly rent in the amount of \$1,450 is due on the first day of each month. A security deposit of \$725 was paid by tenants at the start of the tenancy, which the landlord continues to hold.

The landlord testified that he served the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") dated May 12, 2015 on May 13, 2015 via personal service on tenant Y.P. at the rental unit at approximately 6pm and that tenant Y.P. accepted the document from him. The effective vacancy date of the 10 Day Notice is listed as May 22, 2015. The tenants did not dispute the 10 Day Notice or pay any rent since receiving the 10 Day Notice. The amount listed on the 10 Day Notice is \$1,450 due April 15, 2015.

The landlord clarified that his monetary claim is for \$3,675 comprised of the following:

1. Unpaid April 2015 rent due April 15, 2015	\$1,450
2. Unpaid May 2015 rent due May 15, 2015	\$1,450
3. Unpaid June 2015 rent due June 15, 2015	\$1,450
4. Plus filing fee if entitled of \$50 for recovery of filing fee	\$50
SUB-TOTAL	\$4,400

<i>Less Tenants' \$725 security deposit if entitled to retain in full</i>	<i>-\$725</i>
<b>TOTAL</b>	<b>\$3,675</b>

The landlord testified that in addition to failing to pay April 2015 rent, the tenants have also failed to pay May 2015 and June 2015 rent as noted above. The landlord stated that the tenants continue to occupy the rental unit.

### 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 May 12, 2015. By serving the 10 Day Notice on tenant Y.P. on May 13, 2015, the tenants are deemed served as of that day. The tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, which is May 23, 2015. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

**Claim for unpaid rent** – I accept the landlord's undisputed testimony that the tenants have failed to pay a total of \$4,400 in rent comprised of \$1,450 owing for April 2015 rent, \$1,450 owing for May 2015 rent and \$1,450 owing for June 2015 rent. 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 15<sup>th</sup> day of each month. As the tenants continue to occupy the rental unit, the landlord will not regain possession of the 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 **\$4,400** 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 \$725.

**I ORDER** the landlord to retain the tenants' security deposit in full in partial satisfaction of the landlord's monetary claim. This results in a balance owing by the tenants to the landlord in the amount of \$3,675.

**Monetary Order** – **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the net amount of **\$3,675** comprised \$4,400 in unpaid rent, plus the recovery of

the \$50 filing fee, less the \$725 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 \$3,675. 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 10, 2015

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Residential Tenancy Branch

