



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPR, MNR, FF  
CNR, OPT

### Introduction

This hearing concerns 2 applications:

- i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee; and
- ii) by the tenants for cancellation of a notice to end tenancy for unpaid rent / and an order of possession for the unit.

The landlord attended and gave affirmed testimony. Neither tenant appeared.

The landlord's online application was filed on June 22, 2015. The landlord testified that he did not print a copy of his application and did not serve the tenants with a copy of his application.

In response to the landlord's application, the Branch sent him notice of hearing documents by email. The notice of hearing documents are dated June 24, 2015 and are required to be served on the tenants within 3 days of receipt [Section 59 of the Act – **Starting proceedings**, and Residential Tenancy Branch Rule of Procedure # 3 – "Serving the Application and Submitting and Exchanging Evidence."] However, the landlord did not open the email until very recently, and did not serve the tenants with the notice of hearing documents until July 20, 2015, which is 2 days ago.

The tenants filed their application by way of Service BC on June 12, 2015. The landlord testified that he was not served with a copy of the tenants' application. The landlord also testified that he was not served with the tenants' notice of hearing document.

The impact of the above service / absence of service on the respective applications is addressed below.

Further to his request for an order of possession by way of his online application, during the hearing the landlord made an oral request for an order of possession.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on March 01, 2015. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$300.00 were collected.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated June 08, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is June 18, 2015. Subsequently, the tenants filed an application to dispute the notice on June 12, 2015, and they continue to reside in the unit. As to payments toward rent after issuance of the 10 day notice, the landlord testified as follows:

\$1,100.00: *paid on June 28, 2015*

\$100.00: *paid on June 30, 2015*

Additionally, the landlord testified that after rent was not paid when due on July 01, 2015, he issued another 10 day notice. A copy of this notice is not in evidence. Thereafter, the tenants made limited payment of \$650.00 on July 13, 2015.

### Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated June 08, 2015. The tenants filed an application to dispute the notice on June 12, 2015, which is within the limited 5 day period available for doing so pursuant to section 46(4) of the Act, following their receipt of the notice. However, the tenants failed to pay the full amount of outstanding rent within that 5 day period.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find there is no evidence that the tenants had a right under the Act to deduct all or a portion of the rent.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Following from all of the above, and in the absence of the tenants at the hearing scheduled in response to applications by both parties, the tenants' application for cancellation of the 10 day notice and an order of possession for the unit is hereby dismissed, and arising from the landlord's oral request during the hearing I find that the landlord has established entitlement to an **order of possession**.

As the landlord failed to serve the tenants with his application for dispute resolution and notice of hearing (the "hearing package") in accordance with section 59 of the Act and Rule of Procedure # 3, I find that the landlord's application for compensation reflecting certain unpaid rent and recovery of the filing fee, must be dismissed.

#### Conclusion

The tenants' application is hereby dismissed in its entirety.

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord's application is otherwise hereby dismissed.

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: July 22, 2015

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Residential Tenancy Branch

