



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. The agent stated that the landlord could not attend the hearing as he was currently in the hospital prepping for surgery. As the agent was prepared to proceed, the hearing commenced. The hearing process was explained to the agent. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent testified that the tenants were served the Notice of Hearing, Application and documentary evidence on June 18, 2015 by registered mail in separate packages addressed to each tenant at the rental unit address as the tenants continue to occupy the rental unit. The agent provided two registered mail tracking numbers in evidence. According to the Canada Post registered mail tracking website, both packages were returned to sender, the landlord, as of July 18, 2015. Section 90 of the *Act* states that documents served by mail are deemed served five days after they are mailed. Accordingly, I deem both tenants to have been sufficiently served with the Notice of Hearing, Application and documentary evidence as of June 23, 2015. I note that refusal or failure to accept service by registered mail is not grounds for a Review Consideration.

### Preliminary and Procedural Matter

At the outset of the hearing, the agent stated that the landlord requested to withdraw his request for unpaid utilities and will file for those at a later date. As a result, I have not considered the landlord's request for unpaid utilities and note that the landlord is at liberty to reapply for unpaid utilities. I also note that withdrawing the request for unpaid utilities does not extend any applicable timelines under 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?
- Is the landlord entitled to the recovery of the filing fee under the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy agreement began on August 1, 2014 and reverted to a month to month tenancy as of July 31, 2015. Monthly rent in the amount of \$1,200 plus 60% of hydro/electrical utilities was due on the first day of each month. A security deposit of \$600 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The agent stated that the landlord's monetary claim was \$4,800 comprised of the following:

Item Description	Amount
1. Unpaid May 2015 rent	\$1,200
2. Unpaid June 2015 rent	\$1,200
3. Unpaid July 2015 rent	\$1,200
4. Unpaid August 2015 rent	\$1,200
<b>TOTAL</b>	<b>\$4,800</b>

The landlord submitted a copy of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") in evidence. The agent testified that the 10 Day Notice was served personally on the tenants on June 6, 2015 in the afternoon and was dated June 6, 2015. The effective vacancy date on the 10 Day Notice is listed as June 16, 2015. The amount listed as owing is \$3,050 in rent and \$921 in utilities due June 1, 2015. The agent

testified that the tenants did not pay the amount owing or dispute the 10 Day Notice within 5 days of being served on June 6, 2015.

The agent testified that since being served with the 10 Day Notice, the tenants have failed to pay July and August 2015 rent at \$1,200 for each month also. The agent verbally requested to have any monetary amount offset from the tenants' security deposit if the landlord is entitled under the *Act*.

### Analysis

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

**Order of Possession** - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice which in the matter before me was June 16, 2015 as the 10 Day Notice was served on June 6, 2015. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

**Claim for unpaid rent/loss of rent** – The agent testified that the tenants still owe \$1,200 in rent for the months of May, June, July and August 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. The tenants continue to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has therefore suffered a loss.

I find the landlord has met the burden of proof and has established a monetary claim of **\$4,800** comprised of \$1,200 in unpaid rent for each of the months of May and June 2015, plus \$1,200 for loss of July 2015 rent, and \$1,200 for loss of August 2015 rent.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50** filing fee. The tenant's security deposit of \$600 has accrued no interest since the start of the tenancy.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit which has accrued no interest as follows:

1. Unpaid May 2015 rent	\$1,200
2. Unpaid June 2015 rent	\$1,200
3. Loss of rent for July 2015	\$1,200
4. Loss of rent for August 2015	\$1,200
5. Recovery of the cost of the filing fee	\$50
<b>Subtotal</b>	<b>\$4,850</b>
<i>(Less Tenants' Security Deposit of \$600 with \$0 in interest)</i>	<i>-\$600.00</i>
<b>TOTAL OWING BY THE TENANTS TO LANDLORD</b>	<b>\$4,250</b>

### Conclusion

The landlord's claim is successful. 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 established a total monetary claim of \$4,850 as described above. I authorize the landlord to retain the tenants' full security deposit of \$600 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of **\$4,250**. This order must be served on the tenants and 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: August 17, 2015

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Residential Tenancy Branch

