



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction and Preliminary Matters

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

Prior to the hearing, the son of the landlord submitted a copy of a will to prove that the landlord passed away on July 31, 2015, and that the landlord left the rental unit property to him and his spouse, M.M. Both the son of the landlord, B.M., and his spouse, M.M. attended the hearing and requested that the landlord's application be amended to read the "Estate of" and the name of the landlord. Pursuant to section 64(3) of the Act, I permit the amendment as requested as the definition of landlord under section 1(b) of the Act includes "the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a)". Based on the above, I accept that the son, B.M. and his spouse, M.M. attended the hearing as personal representatives and successors in title to the landlord.

For the purposes of this hearing, I will refer to B.M. and M.M. hereinafter as "agents". The agents were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing.

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 agents testified under oath that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on June 25, 2015, with one package for each of the tenants. The landlord provided a registered mail receipt with tracking numbers in evidence and the agents confirmed that the names and addresses matched the name of the tenants and

the address of the rental unit and that the tenants were still living at the rental unit at the time they were served as the tenants continue to occupy the rental unit. The agents stated that both registered mail packages were returned to them and marked “unclaimed”, which was supported by the Canada Post registered mail tracking website.

Section 90 of the *Act*, states that documents served by registered mail are deemed served five days after they are mailed. I find the tenants are deemed duly served with the Notice of Hearing, Application and documentary evidence on the fifth day after the registered mail packages were mailed on June 25, 2015, in accordance with the *Act*, which would be June 30, 2015.

A summary of the testimony is provided below and includes only that which is relevant to the hearing.

#### 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 return of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on May 1, 2015. Monthly rent in the amount of \$1,000 was on the first day of each month. The agents stated that tenants failed to pay the full security deposit of \$500 and only paid \$375 of the security deposit.

The agents confirmed that that the landlord’s monetary claim is as follows:

Item #	Description	Amount
1	Unpaid portion of June 2015 rent	\$500
2	Unpaid July 2015 rent	\$1,000
3	Unpaid August 2015 rent	\$1,000
<b>TOTAL</b>		<b>\$2,500</b>

The agents testified that the tenants failed to pay \$500 of June 2015 rent, and have not paid any rent since for the months of July and August of 2015, so the landlord has suffered a loss of \$1,000 for each of those months.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated June 8, 2015 and which the agents testified was placed in the tenants' mail box on June 8, 2015, which is deemed served three days later in accordance with section 90 of the *Act*. The amount listed as owed on the 10 Day Notice is \$1,000 due June 1, 2015. The effective vacancy date listed on the 10 Day Notice is June 18, 2015.

The agents testified that the tenants continue to occupy the rental unit and did not dispute the 10 Day Notice or pay the amount owed described on the 10 Day Notice. The agents verbally requested an order of possession during the hearing.

### Analysis

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

**Order of Possession** - I accept the agents' undisputed testimony 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, automatically corrects pursuant to section 53 of the *Act* to June 21, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

**Monetary claim of landlord** – The agents testified that the tenants failed to pay the \$500 of June 2015 rent, and that the landlord suffered a loss of rent for July 2015 of \$1,000 and August 2015 of \$1,000. 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 the tenants breached section 26 of the *Act* by failing to pay \$500 of June 2015 rent, and that the landlord suffered a loss of rent in the amount of \$1,000 for July 2015 and \$1,000 for August 2015. Therefore, I find the landlord has met the burden of proof and is entitled to **\$2,500** in unpaid rent and loss of rent.

As the landlord's application had merit, I grant the landlord the recovery of the **\$50** filing fee pursuant to section 72 of the *Act*.

The tenants' security deposit of \$375 has accrued no interest since the start of the tenancy.

I find that the landlord has established a total monetary claim of **\$2,550** consisting of \$2,500 in unpaid rent and loss of rent, plus the \$50 filing fee. **I ORDER** the landlord to retain the tenants' full security deposit of \$375 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$2,175**.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession. If required, the order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$2,550. The landlord has been authorized to retain the tenants' full security deposit of \$375 in partial satisfaction of the landlord's monetary claim, and the landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,175. 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 21, 2015

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Residential Tenancy Branch

