



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VALLEJO HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OPR (Landlord's Application)  
MT, CNR, MNDC, LRE, FF (Tenant's Application)

### **Introduction**

This hearing dealt with cross applications. In the Application for Dispute Resolution by the Landlord they indicated they sought Order of Possession based on unpaid rent. The Tenant sought an Order for more time to apply to cancel a Notice, for an Order canceling a Notice to End Tenancy, an Order restricting the Landlord's right to enter the rental unit and to recover the filing fee.

Only the Landlord's manager, A.K. appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified served the Tenant with the Notice of Hearing and their Application on June 25, 2015 by registered mail. Introduced in evidence was a copy of the registered mail receipt and tracking number. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of June 30, 2015.

The hearing was by telephone conference call and was to begin at 10:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Agent for the Respondent Landlord.

Therefore, as the Applicant Tenants did not attend the hearing by 10:40 a.m., I dismiss their claim without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

### Background and Evidence

The Landlord testified as to the terms of the tenancy and stated that the tenancy began April 1, 2015. Monthly rent was payable in the amount of \$650.00. A security deposit in the amount of \$325.00 was paid on at the start of the tenancy.

The Tenant failed to pay rent for the month of June 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on June 4, 2015 indicating the amount of \$650.00 was due as of June 1, 2015 (the "Notice").

Based on the testimony of A.K., and the filed proof of service, I find that the Tenant was served with the Notice on June 4, 2015 by registered mail and posting to the door. Section 90 of the Act provides that documents served in this manner are deemed served five days later in the case of registered mail and three days later in the case of posting to the door. Accordingly, I find that the Tenant was served with the Notice as of June 7, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, June 12, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant applied for dispute resolution on June 9, 2015.

The Landlord advised that the Tenant did not pay rent for July or August.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not attend the hearing to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

This decision is final and binding on the parties, except as 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 20, 2015

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Residential Tenancy Branch

