



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER TOWER LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began September 1, 2012. Monthly rent was payable in the amount of \$2,350.00. A security deposit in the amount of \$1,175.00 was paid at the commencement of the tenancy.

The Tenants failed to pay rent for the months of May, June, and July, 2015. On July 7, 2015, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent indicating the amount of \$7,050.00 was due as of July 1, 2015 (the "Notice").

Based on the testimony of the Landlord, I find that the Tenants were personally served with the Notice on July 7, 2015. Accordingly, I find that the Tenants were served with the Notice as of July 7, 2015.

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

The Landlord testified that the Tenants did not pay the outstanding rent, nor did they pay rent for August or September leaving a total balance owing for rent in the amount of \$11,750.00. The Landlord also sought recovery of the filing fee such that the Landlord sought monetary compensation in the amount of \$11,850.00.

The Landlord also testified that the Tenants also rented an additional parking stall in the amount of \$180.00 per month and in addition to failing to pay rent for the months May through September 2015, they also failed to pay for this parking stall such that the sum of \$900.00 was owed as of the date of the hearing. I informed the Landlord that as an application for dispute resolution did not indicate a claim for compensation for outstanding parking, that I would not be considering this request. The Landlord is at liberty to apply for a further monetary order.

N.G. testified on behalf of the Tenants. He confirmed that they received the Notice on July 7, 2015. He further confirmed that they failed to pay rent for May, June, July, August and September. He stated that he informed the Landlord that they were not able to pay rent as they were waiting for funds from overseas and this "takes a long time".

### Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants 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 Tenants. This Order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$11,850.00 comprised of outstanding rent and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$1,175.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$10,675.00**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

### Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are 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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

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: September 24, 2015

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Residential Tenancy Branch

