



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with a landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain 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 tenant's security deposit, and to recover the cost of the filing fee.

The tenant and landlord G.W. (the "landlord") attended the teleconference hearing and gave affirmed testimony. At the outset of the hearing, the hearing process was explained to the parties, as were expectations regarding conduct during the hearing. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the affirmed testimony is provided below and includes only that which is relevant to the hearing.

The tenant testified under oath that he denied receiving the documentary evidence sent by registered mail. The landlord testified that the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were all served by registered mail to the tenant at the rental unit address. The landlord provided a tracking number in evidence which indicates that the registered mail package dated August 17, 2015 was mailed to the tenant and that the registered mail package was returned to send on September 10, 2015. The landlord testified that the notification slip for the registered mail was posted to the tenant's door on August 18, 2015, and about one week later, a second reminder notification slip was also taped to the tenant's door. The tenant denied receiving any mail during the tenancy or anything on his door. The tenant stated that he only knew about the hearing by attending at the Residential Tenancy Branch office but provided no information on when that was.

I find that the tenant was deemed served 5 days after the registered mail package was mailed on August 17, 2015 in accordance with section 90 of the *Act* which deems that

documents served by registered mail are deemed served five days after they are mailed. I do not accept the tenant's version of finding out about the hearing by attending the Residential Tenancy Branch as I find the tenant's testimony to be inconsistent. One example of this is when the tenant first stated that he was not living in the rental unit before July 1, 2015 and later changed his testimony that he was living there but was also living in a different rental unit elsewhere.

### Preliminary and Procedural Matter

At the outset of the hearing, the parties were advised of the conduct expected during the hearing and that interruptions by either party would not be tolerated. During the hearing, the tenant was cautioned on several occasions for continuing to interrupt myself and the landlord throughout the course of the 22 minute hearing.

### Issues to be Decided

- Are the landlords entitled to an order of possession for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Although the tenancy agreement indicates that the tenancy began on July 1, 2015, the tenant disputed that and claimed he was residing in the rental unit for two months prior to that date, which the landlord denied.

The tenant also disputed the amount of monthly rent. The signed tenancy agreement indicates that monthly rent was \$1,000 per month, although the tenant testified that rent was only \$980 per month, which the landlord denied. The parties did agree that the tenant paid a security deposit of \$500, which the landlord continues to hold.

The landlord's monetary claim for \$1,500 is comprised of the following:

ITEM DESCRIPTION	AMOUNT
1. Unpaid portion of August 2015 rent	\$500
2. Unpaid September 2015 rent	\$1,000
<b>TOTAL</b>	<b>\$1,500</b>

A copy of the 10 Day Notice dated August 5, 2015 was submitted in evidence. The tenant denied ever receiving a copy of the 10 Day Notice and claims that he did not need to submit documentary evidence in response to the landlord's application for an order of possession and for a monetary order for unpaid rent as he was planning to vacate anyways. The tenant claims he paid August and September 2015 rent and didn't need to submit any evidence to support that as he was planning to vacate the rental unit anyways.

The tenant confirmed that he continues to occupy the rental unit. The tenant did not dispute the 10 Day Notice and the effective vacancy date of August 14, 2015 has passed.

### Analysis

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

**Order of possession** – I find the tenant's testimony to be unbelievable. The tenant testified that because he was already planning on vacating the rental unit, he did not need to submit documentary evidence to support that he paid rent for August and September 2015. The tenant also claims he was never served with a 10 Day Notice yet testified under oath that he attended the Residential Tenancy Branch on an unspecified date and obtained the landlords' application and notice of hearing, which clearly indicates that a 10 Day Notice was posted to the tenant's door on August 5, 2015 and that \$1,500 in unpaid rent for the months of August and September 2015 were being claimed by the landlords, in addition to an order of possession.

I find the tenant lacked credibility during the hearing and prefer the evidence of the landlord as a result. Given the above, I accept that the landlord served the 10 Day Notice by posting to the tenant's door on August 5, 2015. The tenant was deemed served three days later on August 8, 2015. The tenant did not dispute the 10 Day Notice. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which in the matter before me, was August 14, 2015 and which automatically

corrects under section 53 of the *Act* to August 18, 2015. Therefore, pursuant to section 55 of the *Act*, I grant the landlords an order of possession effective **two (2) days** after service on the tenant. I note that while the tenant was willing to agree to an order of possession for September 25, 2015, I am granting a two day order of possession instead as the parties could not agree on the amount of rent owing.

**Claim for unpaid rent and loss of rent** – I find the tenant has provided insufficient evidence to prove that any rent was paid for August or September of 2015. I find that monthly rent was \$1,000 per month as per the written tenancy agreement. I find that the tenant provided insufficient evidence to support that rent was \$980 as he claimed.

Section 26 of the *Act* states a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I find that the landlord has met the burden of proof and has established a monetary claim of \$1,500 comprised of \$500 owing for August 2015 rent, plus loss of rent of \$1,000 for September 2015 as the tenancy ended on August 18, 2015, the corrected effective vacancy date of the 10 Day Notice.

As the landlords have succeeded with their application, I grant the landlords the recovery of the filing fee in the amount of **\$50**.

**Monetary Order** – I find that the landlords are entitled to a monetary order pursuant to section 67 of the *Act* as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid portion of August 2015 rent	\$500
2. Unpaid September 2015 rent	\$1,000
3. Recovery of cost of filing fee	\$50
<b>TOTAL</b>	<b>\$1,550</b>

Pursuant to section 72 of the *Act*, I **authorize** the landlords to retain the tenant's full security deposit of \$500 in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlords in the amount of **\$1,050**.

### Conclusion

The landlords' application is successful.

The landlords have been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlords have established a total monetary claim of \$1,550 as indicated above. The landlords have been authorized to retain the tenant's full security deposit of \$500 in partial satisfaction of the landlords' monetary claim. The landlords have also been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlords in the amount of \$1,050. This order must be served on the tenant 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: September 18, 2015

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Residential Tenancy Branch

