



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, 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.

Only the Landlord's manager, J.E. appeared at the hearing (hereinafter referred to as the "Landlord"). 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 September 25, 2015 by registered mail. Introduced in evidence was a copy of the receipt for registered mail as well as the tracking number. Under section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 30, 2015.

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.

### Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the tenant vacated the rental unit on approximately October 31, 2015. As a result, the Landlord requested to withdraw their request for an Order of Possession as the tenant had already given up possession of the rental unit.

Issues to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to monetary relief?
2. Is the Landlord entitled to retain the security deposit?
3. Should the Landlord recover the fee paid to file the Application?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows: the tenancy began November 10, 2012; monthly rent was payable in the amount of \$730.00; and a security deposit in the amount of \$365.00 was paid at the start of the tenancy.

The Tenant failed to pay rent for the month of September 2015. The Landlord then issued a 10 day Notice to End Tenancy for non-payment of rent on September 14, 2015 which indicated the amount of \$730.00 was due as of September 1, 2015 (the "Notice"). The effective date of the Notice was noted as September 27, 2015.

The Landlord testified that the Tenant was served with the Notice on September 14, 2015 by posting to the rental unit door. Section 90 of the *Residential Tenancy Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of September 17, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, September 22, 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 Landlord testified that the Tenant failed to pay the outstanding rent, and the Tenant did not make an application to dispute the Notice.

The Landlord further testified that the Tenant also did not pay rent for October 2015 such that he sought a Monetary Order for \$1,510.00 representing: September rent in the amount of \$730.00; October rent in the amount of \$730.00; and, the \$50.00 filing fee.

### 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 apply 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 has established a total monetary claim of \$1,510.00 comprised outstanding September rent in the amount of \$730.00; outstanding October rent in the amount of \$730.00; and, the \$50.00 fee paid by the Landlord for this application.

I Order that the Landlord retain the security deposit of \$365.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,145.00**. This Order may be filed in the Provincial Court (Small Claims) 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 may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due in the amount of **\$1,145.00**.

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: November 25, 2015

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Residential Tenancy Branch

