



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPR OPL MNR FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities and for landlord's use of property, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to 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 agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenants by separate registered mail packages on October 28, 2015, at the rental unit address and that the tenants continue to occupy the rental unit. The agent provided two registered mail tracking numbers in evidence and confirmed that the names and addresses matched the names of both tenants and the rental unit address. The agent testified that she tracked the registered mail packages online and the packages showed as being signed for and accepted on November 3, 2015, which is supported by the online registered mail tracking website information. Based on the above, I find the tenants were sufficiently served as of November 3, 2015, the day the packages were signed for and accepted.

### Preliminary and Procedural Matter

The agent testified that in addition to the rent owed as claimed, the landlord has suffered a loss of rent for December 2015. As a result, the agent requested to amend the application to include loss of rent owed for December 2015 in the amount of \$550.00. The agent also stated that the tenants continue to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to include \$550.00 for loss of December 2015 rent pursuant to section 64(3) of the *Act*.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord 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. A month to month tenancy began on April 4, 2008. The tenants' current rent is \$550.00 per month and is due on the first day of each month.

The agent testified that a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated October 8, 2015 was mailed to the tenants on October 8, 2015, with an effective vacancy date of October 23, 2015. Pursuant to section 90 of the *Act*, documents served by mail are deemed served five days after they are mailed. As a result I find the tenants were served as of October 13, 2015. The tenants did not dispute the 10 Day Notice and did not pay the amount of rent owed, \$950.00 owed as of October 1, 2015, comprised of \$400.00 owing for the unpaid portion of September 2015 rent, plus \$500.00 owing for October 2015 rent, within five days of receiving the 10 Day Notice.

The agent testified that as of the date of the hearing, the tenants owe a total of \$2,050.00 in unpaid rent and loss of rent comprised of \$400.00 owing for the unpaid portion of September 2015 rent, \$550.00 owing for October 2015 rent, \$550.00 owing for November 2015 loss of rent, and \$550.00 owing for December 2015 loss of rent.

### Analysis

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

**Order of possession** - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as October 23, 2015, which is 10 days after the tenant was deemed to have received the 10 Day Notice on October 13, 2015. I find the tenants are 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, October 23, 2015. The tenants continue to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

**Claim for unpaid rent and loss of rent** – I accept the agent's undisputed testimony that the tenants failed to pay a total of \$2,050.00 in unpaid rent and loss of rent. 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 that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,050.00** comprised of unpaid rent and loss of rent as claimed by the landlord.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$50.00**.

The landlord has established a total monetary claim of **\$2,100.00** comprised of \$2,050.00 in unpaid rent and loss of rent, plus the recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount owing by the tenants to the landlord in the amount of **\$2,100.00**

#### Conclusion

The landlord's application is successful.

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

The landlord has established a total monetary claim of \$2,100.00 as indicated above. The landlord has been granted a monetary order under section 67 for the amount owing by the tenants to the landlord in the amount of \$2,100.00. 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: December 16, 2015

---

Residential Tenancy Branch

