



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlords also applied to keep the Tenant's security deposit, for damages to the rental unit, and to recover the filing fee from the Tenant.

One of the Landlords who identified himself as the property manager appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlords.

The Landlord testified that he personally served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on December 22, 2015. Therefore, in the absence of any evidence to dispute this, I find the Landlord completed service of the documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord explained that he had provided a copy of the notice to end tenancy and a proof of service document into evidence. However, this was not before me. Therefore, pursuant to Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure*, I allowed the Landlord to provide a copy of this after the hearing had concluded as the Tenant would have likely seen this document prior to the Landlords making the Application.

The Landlord also confirmed that the monetary claim of \$1,800.00 only related to unpaid rent. Therefore, the Landlord withdrew the Application for damages to the rental unit as the Tenant has not yet vacated the rental unit.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started approximately eight years ago and the owner of the rental unit only took over the tenancy recently and employed him as the property manager. The Landlord testified that this month to month tenancy requires the Tenant to pay rent in the amount of \$600.00 on the first day of each month. The Landlord confirmed that the owner holds a security deposit of \$300.00 which was paid to the original owners at the start of the tenancy.

The Landlord testified that the Tenant failed to pay rent for December 2015. As a result, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on December 2, 2015. The Notice was personally served to the Tenant with a witness who signed a Proof of Service document to verify this method of service. The Notice was provided into evidence and shows a vacancy date of December 12, 2015 due to \$600.00 in unpaid rent that was due on December 1, 2015.

The Landlord testified that in addition, the Tenant has failed to pay rent for January and February 2016. Therefore they now seek an Order of Possession and a Monetary Order in the amount of \$1,800.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed oral and witness evidence that the Notice was personally served to the Tenant on December 2, 2015. Therefore, the Tenant would have had until December 7, 2015 to either pay the outstanding rent on the Notice or make an Application to dispute the Notice. There is no evidence before me that the Tenant did either.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended. Therefore, the Tenant would have had to vacate the rental unit on the vacancy date of the Notice of December 12, 2015.

As the vacancy date on the Notice has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlords are granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlords' monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenant failed to pay rent for December 2015, January 2016, and February 2016. Accordingly I award the Landlord **\$1,800.00** in unpaid rent. As the Landlords have been successful in this claim, I also award the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlords is **\$1,850.00**.

As the Landlords hold the Tenant's security deposit of \$300.00, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlords are issued with a Monetary Order for the remaining balance of **\$1,550.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment. Copies of both orders for service and enforcement are attached to the Landlords' copy of this decision.

### Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlords are granted a two day Order of Possession. The Landlords are allowed to keep the Tenant's security deposit and are issued with a Monetary Order for the remaining balance of \$1,550.00. The Landlord withdrew the Application for damages to the rental unit and they are at liberty to re-apply for this.

This decision 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: February 09, 2016

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Residential Tenancy Branch

