



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1112 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenants with the dispute resolution packages on 31 December 2015 by registered mail. The landlord provided me with Canada Post customer receipts that showed the same. The agent testified that both mailings were returned as the tenants failed to retrieve them. The agent testified that he was able to serve the tenant RC in person on or about 22 January 2016.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenants were deemed served with the dispute resolution package on 5 January 2016, the fifth day after its mailing.

The agent testified that the landlord served the tenants with the 10 Day Notice on 16 December 2015 by posting the notice to the tenants' door. The landlord provided me

with a witnessed proof of service document. On the basis of this evidence, I am satisfied that the tenants were deemed served with 10 Day Notice on 19 December 2015 pursuant to sections 88 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 October 2009. The landlord and tenants entered into a tenancy agreement on 23 October 2009. Monthly rent was initially \$700.00 and is currently \$730.00. Rent is due on the first of the month. The original agreement included an option to purchase the manufactured home on the manufactured home site. The agent testified that this agreement terminated when the tenants defaulted on their rent payments.

The first page of the tenancy agreement establishes a fee of \$25.00 for late payment of rent.

On 16 December 2015, the landlord issued the 10 Day Notice to the tenants. The 10 Day Notice was dated 16 December 2015 and set out an effective date of 16 December 2015. The 10 Day Notice set out that the tenants failed to pay \$730.00 in rent that was due on 1 December 2015.

The agent testified that the tenants have not made any payments towards the rent arrears since the issuance of the 10 Day Notice. The agent testified that he is not aware of any reason that would entitle the tenants to deduct any amount from rent.

The landlord claims for \$2,315.00:

| <b>Item</b>                        | <b>Amount</b>     |
|------------------------------------|-------------------|
| Unpaid December Rent               | \$730.00          |
| December Late Fee                  | 25.00             |
| Unpaid January Rent                | 730.00            |
| January Late Fee                   | 25.00             |
| Unpaid February Rent               | 730.00            |
| February Late Fee                  | 25.00             |
| Recover Filing Fee                 | 50.00             |
| <b>Total Monetary Order Sought</b> | <b>\$2,315.00</b> |

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on 29 December 2015, the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by 29 December 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and uncontested evidence that the tenants have unpaid rental arrears totaling \$2,190.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

Paragraph 7(1)(d) of the *Residential Tenancy Regulation* provides that a landlord may charge an administration fee of \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for this fee on the first page of the agreement. I find that the landlord is entitled to charge the fee. I find that the tenants have not paid rent on time on three occasions. The landlord is entitled to recover \$25.00 per occasion.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,315.00 under the following terms:

| <b>Item</b>                 | <b>Amount</b>     |
|-----------------------------|-------------------|
| Rent Arrears                | \$2,190.00        |
| Late Fees                   | 75.00             |
| Recover Filing Fee          | 50.00             |
| <b>Total Monetary Order</b> | <b>\$2,315.00</b> |

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 15, 2016

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Residential Tenancy Branch

