



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent.

The Landlords originally applied by way of Direct Request Proceeding. By Decision dated January 13, 2016 the matter was adjourned to a participatory hearing on March 7, 2016.

Only the Landlords' agent, L.S. appeared at the hearing on March 7, 2016. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

L.S. testified that she served the Tenant with the Notice of Hearing and the Landlords' Application on January 25, 2016 by registered mail. Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 30, 2016.

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.

### Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlords to an Order of Possession and monetary relief?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating that the tenancy began January 1, 2014. Monthly rent was payable in the amount of \$1,000.00.

The Landlords introduced in evidence the Tenant Leger for the period from July 1, 2015 to December 4, 2015. This document indicates that the Tenants failed to pay rent for the month of July 2015. L.S. testified that although the Tenants made some payments, as of December 4, 2015 the amount of \$2,850.00 was outstanding. The Landlords issued a 10 day Notice to End Tenancy for non-payment of rent on December 4, 2015 indicating the amount of \$2,850.00 was due as of December 1, 2015 (the "Notice").

Based on the testimony of L.S., I find that the Tenant, B.J., was personally served with the Notice on December 4, 2015; accordingly, I find that the Tenants were duly served with the Notice.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, December 9, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

L.S. testified that the Tenants made some payments following receipt of the Notice; however, they failed to pay the January 2016 rent when due, as well as the February 2016 and March 2016 rent when due. The Landlords sought the sum of \$4,350.00 in outstanding rent calculated as follows:

Outstanding as of date of Notice	\$2,850.00
<i>Less December 4, 2015 payment</i>	<i>\$500.00</i>
Outstanding for January 2016	\$1,000.00
Outstanding for February 2016	\$1,000.00
<i>Less February 13, 2016 payment</i>	<i>\$500.00</i>
<i>Less February 26, 2016 payment</i>	<i>\$500.00</i>
Outstanding for March 2016	\$1,000.00
<b>TOTAL OUTSTANDING RENT</b>	<b>\$4,350.00</b>

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 Tenants must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlords are entitled to an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlords have established a total monetary claim of **\$4,350.00** comprised of rent owing; and I grant the Landlords an Order under section 67 for the amount due. This Order must be served on the Tenants and may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

### Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. They are presumed to have accepted the end of the tenancy pursuant to section 46 of the *Residential Tenancy Act*.

The Landlords are granted an Order of Possession and are granted a monetary Order for the balance due.

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: March 07, 2016

