



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord provided documentary evidence to confirm each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 19, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the evidence of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

The landlord confirmed at the outset of the hearing the tenants have paid all outstanding rent and as such she no longer requires a monetary order for unpaid rent. I amend the landlord's Application for Dispute Resolution to exclude the claim for unpaid rent.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord has submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 20, 2015 for a 3 month fixed term tenancy beginning on February 1, 2016 for a monthly rent of \$875.00 due on the 1<sup>st</sup> of each month with a security deposit of \$437.50 and a pet damage deposit of \$218.75 required and are now paid;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on February 4, 2016 with an effective vacancy date of February 14, 2016 due to unpaid rent in the amount of \$437.50. The notice also has additional notations stating a total of \$1041.25 is outstanding including \$437.50 for the security deposit and \$218.75 for the pet damage deposit;
- A copy of a Proof of Service – Notice to End Tenancy document that states the landlord hand delivered the notice (with the handwritten notation that the male tenant pulled it off the door as the landlord entered the suite to conduct the move in inspection); by attaching the notice to the door of the rental unit; and by faxing a copy to the tenants' fax number that had been provided for service (with another handwritten notation stating "EMAIL – with emailed confirmation" [reproduced as written]); and
- A copy of a document entitled "Deposit Against Rent Receipt" dated January 20, 2016 signed by the parties stating the tenants paid the sum of \$440.00 as a "deposit against the first month's rent". The receipt also states that upon move in or on the 1<sup>st</sup> of "the month" the following amounts are payable: \$435.00 as the remainder of the first month's rent; \$437.50 as a security deposit; and \$218.75 as a pet damage deposit.

The landlord testified the tenants had paid all rent up to and including the full month of April 2016. While the landlord could not recall the specific date the tenants paid the full amount of rent identified on the 10 Day Notice to End Tenancy for Unpaid Rent, she did confirm that it was not before February 16, 2016.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

As per the landlord's undisputed testimony I accept the tenants had not paid the rent owed prior to February 16, 2016. I find that based on the landlord's submissions that she served the 10 Day Notice by posting it on the door of the rental unit on February 4, 2016. As such, I find the tenants received the 10 Day Notice on or before February 7, 2016, pursuant to section 90 of the *Act*.

Therefore, I find the tenants had until February 12, 2016 to pay the amount of rent outstanding identified in the Notice or file an Application for Dispute Resolution seeking to cancel the Notice. I find no evidence the tenants had filed such an Application. As such, I find the tenants failed to comply with the requirements of Section 46(4).

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As the tenants have failed to comply with Section 46(4) I find the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find the landlord is entitled to an order of possession effective **April 30, 2016 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$437.50 in satisfaction of this claim. As a result, I find the balance of the security deposit is \$337.50.

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: April 06, 2016

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Residential Tenancy Branch