



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, 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 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Tenant.

An agent for the Landlords appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the eight minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlords for this hearing.

The Landlords' agent testified that the Tenant was served with a copy of the Landlords' Application and the Notice of Hearing documents by registered mail on March 18, 2016. The Landlord provided a copy of the Canada Post tracking number into evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence before me, I find that the Tenant was deemed served with the required documents on March 23, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlords' agent.

### 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?

### Background and Evidence

The Landlords' agent testified that this oral tenancy started on October 16, 2015 on a month to month basis. Rent is payable by the Tenant in the amount of \$1,600.00 on the first day of each month.

The Landlords' agent testified that the Tenant failed to pay rent as follows: \$800.00 for October 2015; nothing for November 2015; \$600.00 for January 2016, and nothing for February 2016. As a result the Landlords personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 16, 2016. The Notice was provided into evidence and shows a vacancy date of February 26, 2016 due to \$4,600.00 in unpaid rent due on February 1, 2016.

The Landlord testified that the Tenant has not disputed the Notice and still continues to occupy the rental unit. In addition, the Tenant has also failed to pay rent for March and April 2016. As a result, the Landlord now seeks to recover unpaid rent in the amount of \$7,800.00 as well as an Order of Possession to end the tenancy.

### Analysis

The Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the oral testimony above, I find the Landlords and Tenant engaged into a month to month tenancy which started in October 2015 as detailed above.

Section 26(1) of the Act requires a tenant to pay rent 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, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was personally served to the Tenant pursuant to Section 88(a) of the Act on February 16, 2016. Therefore, I find the Tenant had until February 21,

2016 to pay the outstanding rent or make an Application to dispute the Notice. There is no evidence before me that the Tenant did either. I also accept the Landlords' agent's testimony that the Tenant has failed to vacate the rental unit by the vacancy date detailed on the Notice.

As a result, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As this date has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may be enforced in the BC Supreme Court as an order of that court.

I find the Landlords are also entitled to unpaid rent in the amount of \$7,800.00 claimed. Since the Landlords have been successful in this Application, I grant the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlords is \$7,900.00. The Landlords are granted a Monetary Order for this amount which must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

### Conclusion

The Tenant has failed to pay rent under this oral tenancy. As a result, the Landlords are granted an Order of Possession effective two days after service on the Tenant. The Landlords are also granted a Monetary Order for \$7,900.00 for unpaid rent.

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 22, 2016

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Residential Tenancy Branch