



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding The Lex Apt. Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, 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 two agents for the landlord.

This hearing was originally scheduled for Thursday, April 28, 2016 at 9:00 a.m. However due to an administrative error the hearing was not conducted. As an arbitrator did not hear the landlord's claim at the scheduled time and because this was an error on the part of the Residential Tenancy Branch a new hearing was re-scheduled for Thursday, May 5, 2016 at 9:00 a.m.

Audit notes on the file show that the landlord was emailed notice of hearing documents and the tenant JH was called and advised of the new hearing date and time. Conference call access codes used in the re-scheduled hearing for both parties were the same as the access codes for the originally scheduled codes.

The landlord testified each tenant was served with the original notice of hearing documents and this Application for Dispute Resolution for the original hearing, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 13, 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 testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

## Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties for a 1 year fixed term tenancy beginning on April 1, 2015 for the monthly rent of \$1,510.00 due on the 1<sup>st</sup> of each month and a security deposit of \$755.00 was paid. The agreement contains a clause requiring the tenants to pay a fee of \$25.00 for the late payment of rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 3, 2016 with an effective vacancy date of March 15, 2016 due to \$1,585.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of March 2016 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on March 3, 2016.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord testified the tenants have not paid any rent for the months of March, April or May 2016.

The landlord also seeks late rent payment fees for each of the 3 months that rent has not yet been paid in the amount of \$75.00.

The landlord also seeks \$50.00 per month for each of the above noted 3 months for the tenant's failure to pay parking fees. The landlord submitted that the parking charges are not a part of the tenancy agreement but are under a separate agreement. The parking agreement was not submitted into evidence.

## Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on March 6, 2016 and the effective date of the notice is amended to March 16, 2016, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find the landlord is entitled to a monetary order for the unpaid rent for the months of March, April, and May 2016 and for the late fees for the same months. However, I find the tenancy agreement does not include any requirement for parking fees and as such, I dismiss this portion of the landlord's claim.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days 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 and grant a monetary order in the amount of **\$4,705.00** comprised of \$4,530.00 rent owed; \$75.00 late charges and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 05, 2016

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Residential Tenancy Branch