



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, OPL, MNR, FF (Landlord's Application)  
MNR, MNDC, RR, FF (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on May 16, 2016 and by the Landlord on May 18, 2016.

The Landlord applied for: an Order of Possession for unpaid rent and utilities and for the Landlord's use of the property; a Monetary Order for unpaid rent and utilities; and, to recover the filing fee from the Tenants.

The Tenants applied for the following: for the cost of emergency repairs; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and, to recover the filing fee from the Landlord.

### Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenants despite the Tenants' Application being scheduled for the same time as the Landlord's Application. As there was no appearance for the Tenants during the 15 minute duration of the hearing, I dismissed the Tenants' Application without leave to re-apply.

As the Tenants named on the Landlord's Application did not appear for the hearing, I turned my mind to the service of documents by the Landlord. The Landlord testified that each Tenant had been served with a copy of the Landlord's Application and the Notice of Hearing documents by registered on May 19, 2016. The Landlord provided 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 of the Landlord, I find the Tenants were deemed served with the required documents on May 24, 2016 pursuant to Section 89(1) (c) and 90(a) of the Act.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities for May 2016?

#### Background and Evidence

The Landlord testified that this tenancy started on August 1, 2015 for a fixed term of one year until July 31, 2016 after which it was intended to end and the Tenants are required to move out of the rental unit. A handwritten tenancy agreement was completed which established that rent is payable by the Tenants in the amount of \$1,000.00 on the first day of each month. However, this was reduced with the consent of both parties to \$900.00 per month starting on April 2016. The same tenancy agreement established that the Tenants were responsible for paying \$75.00 for hydro. The Tenants did not pay a security deposit.

The Landlord testified that the Tenants failed to pay rent and utilities on May 1, 2016 in the amount of \$900.00 and \$180.00 respectively. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 day Notice") by registered mail on May 3, 2016. The Canada Post tracking number was provided into evidence to verify this method of service. The Landlord also testified that prior to the issuing of the 10 Day Notice, the Tenants were also served a 2 Month Notice to End Tenancy for the Landlord's Use of the Property (the "2 Month Notice") on April 20, 2016, also by registered mail.

The Notices were provided into written evidence. The 10 Day Notice has a vacancy date of May 16, 2016 and the 2 Month Notice has a vacancy date of July 1, 2016. The Landlord testified that the Tenants are still occupying the rental unit and have also not paid rent for June 2016. As a result, the Landlord seeks to end the tenancy pursuant to the 10 Day Notice and recover unpaid rent and utilities for May 2016.

With respect to the Landlord's claim for unpaid utilities in the amount of \$180.00, the Landlord explained that the hydro rates being implemented by the hydro company had

increased. Therefore, she wrote to the Tenants explaining that they had to pay the increased amount as part of their utility payment for May 2016.

### Analysis

I first turn my mind to the 10 Day Notice. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement even if the landlord does not comply with the Act, unless the tenant has authority to withhold payment. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute the 10 Day Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Having examined the copy of the 10 Day Notice provided into written evidence, I find 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 10 Day Notice was served to the Tenants by registered mail on May 3, 2016 in accordance with Section 88(c) of the Act. Therefore, pursuant to Section 90(c) of the Act, the Tenants would have been deemed to have received the 10 Day Notice on May 8, 2016 and would have had until May 13, 2016 to pay the outstanding rent and utilities or make an Application to dispute the Notice.

However, there is no evidence before me that the Tenants made an Application to dispute any of the notices to end tenancy or had any authority under the Act to withhold rent. Therefore, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the 10 Day Notice which is corrected to May 18, 2016 pursuant to Section 53 of the Act.

As the corrected vacancy date on the 10 Day Notice has now passed and the Tenants have failed to pay rent for June 2016 and still occupy the rental unit, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants. This order must be served on the Tenants and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit.

As the tenancy has been ended through the 10 Day Notice, I did not examine or make any legal findings on the Landlord's 2 Month Notice as this is now a moot issue for the purposes of this Decision.

I also accept the Landlord's evidence that the Tenants have failed to pay rent in the amount of **\$900.00** for May 2016. Therefore this is awarded to the Landlord. With respect to the Landlord's monetary claim for unpaid utilities in the amount of \$180.00, I reduce this to **\$75.00**. This is because the amount of utilities required to be paid by the Tenants for this tenancy on the signed agreement was \$75.00. Section 14 of the Act prevents a party from unilaterally changing a term of an agreement. There is no evidence before me that the Tenants agreed to pay the increased amount of the utilities during this tenancy. Therefore, only the amount documented on the tenancy agreement can be awarded to the Landlord.

As the Landlord has been successful in proving her Application, I find the Landlord is also entitled to recover from the Tenants the **\$100.00** filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,075.00** (\$900.00 + \$75.00 + \$100.00).

#### Conclusion

The Tenants have breached the Act by not paying rent and utilities. The Landlord is granted an Order of Possession and a Monetary Order in the amount of \$1,075.00. The Tenants' Application is dismissed in its entirety **without** leave to re-apply as the Tenants failed to appear for the hearing. Copies of the above orders are attached to the Landlord's copy of this Decision.

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: June 15, 2016

---

Residential Tenancy Branch