



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MND, FF

### Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for damage, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 25, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)* and the hearing proceeded in the absence of the Tenant.

On September 28, 2016 the Landlords submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch, in which they increased the amount of their monetary claim to \$5,000.00. The Landlord stated that on September 28, 2016 this document was personally served to the Tenant. In the absence of evidence to the contrary I find that this document was served in accordance with section 89 of the *Act*.

On September 28, 2016 the Landlords submitted 19 pages of evidence to the Residential Tenancy Branch. The Landlord stated that on September 28, 2016 these documents were personally served to the Tenant. In the absence of evidence to the contrary I accept these documents were served in accordance with section 88 of the *Act* and I accept them as evidence for these proceedings.

On October 03, 2016 the Landlords submitted 8 pages of evidence to the Residential Tenancy Branch. The Landlord stated that on October 03, 2016 these documents were personally served to the Tenant. In the absence of evidence to the contrary I accept these documents were served in accordance with section 88 of the *Act* and I accept them as evidence for these proceedings.

On November 09, 2016 the Landlords submitted 3 pages of evidence to the Residential Tenancy Branch. The Landlord stated that on November 09, 2016 these documents were personally served to the Tenant. In the absence of evidence to the contrary I accept these documents were served in accordance with section 88 of the *Act* and I accept them as evidence for these proceedings.

### Preliminary Matter

On the Application for Dispute Resolution which was filed on September 25, 2016 the Landlords declared they were seeking a monetary Order for \$600.00.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulates that a landlord may amend an Application for Dispute Resolution if the proceeding has not yet commenced. On the Amendment to an Application for Dispute Resolution which was filed on September 28, 2016 the Landlords declared they were seeking a monetary Order for \$5,000.00. As this document was served to the Tenant on September 28, 2016, I find that the Landlords have amended the Application for Dispute Resolution by increasing the amount of their claim to \$5,000.00.

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

On the Monetary Order Worksheet that was submitted to the Residential Tenancy Branch on September 27, 2016, the Landlords declared their total monetary claim was \$17,000.00. On the Monetary Order Worksheet that was submitted to the Residential Tenancy Branch on October 03, 2016, the Landlords declared their total monetary claim was \$2,171.62.

I find that the list of monetary claims provided is inconsistent with the amount claimed on either Monetary Order Worksheet. I find that it is impossible to determine, from the information provided, whether the Landlords are seeking \$5,000.00, \$17,000.00, or \$2,171.62 in compensation. In light of the contradictory information provided by the Landlords I find that it would be prejudicial to the Tenant to consider all of the Landlords' claims as the contradictory information makes it difficult for the Tenant to prepare a response to the claims.

As the Application for Dispute Resolution clearly declares that the Landlords are seeking compensation for unpaid rent, I will consider the Landlord's claim for rent that is currently overdue. I find that the Tenant knows, or should know, how much rent is currently due and that she should, therefore, understand how much rent the Landlords are claiming.

The remainder of the Landlords' claims is dismissed, with leave to reapply. The Landlord has the right to file another Application for Dispute Resolution for any of the remaining claims.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

### Background and Evidence

The Landlord stated that:

- the Tenant began occupying this rental unit while her father was a tenant of the unit;
- the Landlord and the Tenant subsequently entered into a tenancy agreement;
- their verbal tenancy agreement began on September 01, 2016;
- the Tenant agreed to pay monthly rent of \$650.00 by the first day of each month;
- the Tenant paid \$300.00 in rent for September of 2016;
- the Tenant did not pay any rent for October or November of 2015;
- on September 15, 2016 the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 25, 2015; and
- the Tenant is still living in the rental unit.

The Landlord submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of this dispute.

During the hearing the Landlord was asked if she had signed the Ten Day Notice to End Tenancy for Unpaid Rent and she replied that she had not. When the Landlord was asked why she had not signed the Notice to End Tenancy she replied that there was no place for a signature on the Notice to End Tenancy. When the Landlord was advised that there was a place for a landlord's signature on the Notice to End Tenancy she stated that she was not aware of that.

When the Landlord was advised that an unsigned Ten Day Notice to End Tenancy for Unpaid Rent is not valid she stated that she had signed the copy of the Notice to End Tenancy that was served to the Tenant.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a verbal tenancy agreement with the Landlords that required the Tenant to pay monthly rent of

\$650.00 by the first day of each month and that the Tenant still owes \$1,650.00 in rent for the period ending November 31, 2016. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,650.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent on September 15, 2016.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice.

I find that I have insufficient evidence to conclude that the Ten Day Notice to End Tenancy for Unpaid Rent that was served to the Tenant on September 15, 2016 was signed by the Landlord. In reaching this conclusion I was heavily influenced by the copy of the Notice to End Tenancy that was submitted in evidence, which was not signed.

In concluding that there was insufficient evidence to conclude that the Tenant was served with a signed copy of the Ten Day Notice to End Tenancy for Unpaid Rent I find that the Landlord's testimony regarding the signature was inconsistent and, therefore, unreliable. The Landlord was clearly unaware that the Notice to End Tenancy needed to be signed and she did not declare that she had signed that Notice until she was told an unsigned Notice was not effective.

As the Landlords have submitted insufficient evidence to establish that the Tenant was served with a Ten Day Notice to End Tenancy that complies with section 52(a) of the *Act*, I am unable to grant the Landlords' application for an Order of Possession.

I find that the Landlords' application has merit and that the Landlords are entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Landlords' application for an Order of Possession is dismissed as I am not satisfied that the Tenant was served with a signed Ten Day Notice to End Tenancy for Unpaid Rent.

The Landlords have established a monetary claim, in the amount of \$1,750.00, which includes \$1,650.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlords a monetary Order for \$1,750.00. In the event the Tenant does not

comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: November 17, 2016

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Residential Tenancy Branch