



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPR, OPC, MNR

### Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on November 22, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 47.

The Landlord applied on November 28, 2016 for:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent or utilities - Section 67.

The Tenants failed to attend to present their application or to respond to the Landlord's application. As the Landlord appeared and was ready to respond to the Tenants' application I dismiss the Tenants' application. I accept the Landlord's evidence that each Tenant was served with the Landlord's application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

### Background and Evidence

The tenancy started on September 1, 2016. Rent of \$1,250.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. The Tenant failed to pay full rent for November 2016 and on November 13, 2016 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "10 day Notice") by posting the Notice on the door. The Tenants paid \$490.00 towards November 2016 rent and failed to pay \$760.00. The Tenants also failed to pay rent for December 2016. One Tenant remains in the unit. The Landlord claims \$2,010.00 in unpaid rent.

It is noted that although the Tenants provided copies of the 10 day Notice with their application to dispute the one month notice to end tenancy for cause there is no indication on their application that they disputed the 10 day Notice and no amendment was made to the application.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on undisputed evidence of the date of service I find that the 10 day Notice was deemed to be received on November 16, 2016. Even if the Tenants did dispute the 10 day Notice given the date of the application I find that the Tenants did not dispute the 10 day Notice within the time required. As such and based on the Landlord's undisputed evidence of the non-payment of rent I find that the Tenants are conclusively presumed to accept the end of the tenancy and that the Landlord has therefore substantiated an entitlement to an order of possession. The Landlord has also substantiated unpaid rent of **\$2,010.00**. Deducting the security deposit plus zero interest of **\$625.00** from the entitlement leaves **\$1,385.00** owed by the Tenants to the Landlords.

Conclusion

I **grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I **order** that the Landlord retain the **deposit** and interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,385.00**. If necessary, this order may be filed in the 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: January 04, 2017

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Residential Tenancy Branch