



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SANDY CREEK HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") filed on December 23, 2016 for an Order of Possession and a Monetary Order for unpaid rent. The company Landlord also applied to keep the Tenants' security deposit and to recover the filing fee from the Tenants.

Two agents for 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 during the 17 minute duration of the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord's agents testified that the Tenants were each served a copy of the Application and the Hearing Package by registered mail to the rental unit on January 5, 2017. This was done pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Landlord provided the Canada Post tracking numbers into oral evidence; these are detailed on the front page of this Decision. The Landlords' agents gave me permission for these numbers to be tracked using the Canada Post website. The Canada Post website shows that despite each Tenant being left a notice card for pickup of the documents, these are still waiting to be collected by them.

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's agents, I find the Tenants are both deemed served with the required documents on January 10, 2017 pursuant to the Act.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep or make a deduction from the Tenants' security deposit for unpaid rent?

### Background and Evidence

The Landlord's agents testified that this tenancy started on July 1, 2010 for a fixed term of 12 months which then continued on a month to month basis thereafter. The Tenants provided the Landlord a security deposit of \$350.00 at the start of the tenancy which the Landlord still retains. Rent in this tenancy is currently payable in the amount of \$807.76 on the first day of each month.

The Landlord's agents testified that the Tenants' rent is paid by a third party government agency. However, on December 1, 2016 the Landlord only received \$785.00 for the Tenants' rent. The Landlord's agents testified that the Tenants were informed of this and acknowledged that there was a balance of \$22.76 which they still owed to the Landlord.

The Landlord testified that the Tenants still failed to pay this amount. As a result, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on December 12, 2016 by attaching it to the Tenants' door. The 10 Day Notice was provided into evidence and shows a vacancy date of December 29, 2016, due to \$22.76.00 in unpaid rent.

The Landlords' agents testified that in addition, the Tenants have also failed to pay the outstanding balance of \$22.76 for January 2017 rent. As a result, the Landlord seeks to end the tenancy and recover \$45.52, which is the amount the Landlord's agents confirmed in this hearing was outstanding at the time of this hearing. The Landlords testified the Tenants knew they were in rental arrears and the tenancy was in jeopardy.

### Analysis

I have carefully considered the undisputed oral and documentary evidence before me in this Decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act, unless a tenant has authority under the Act to withhold rent. A failure of a third party or a collapse of an agreement with the tenant and a third party who pays rent on behalf of a tenant would not constitute authority under the Act to withhold any rent.

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 it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the effective vacancy date.

Having examined the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence that it was served to the Tenants by attaching it to the rental unit door.

Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, I find the Tenants were deemed to have received the 10 Day Notice on December 15, 2016 pursuant to the Act.

There is no evidence before me that the Tenants either paid the outstanding rent on the 10 Day Notice or made an Application to dispute it within the stipulated five day time limit. As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice.

As the vacancy date has now passed and the Tenants are still in rental arrears and continue to occupy the rental unit, the Landlord is granted a two day Order of Possession.

This order must be served to the Tenants and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit. Copies of this order for service and enforcement are attached to the Landlord's copy of this Decision and the Tenants may be held liable for any enforcement costs incurred by the Landlord.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's agents' undisputed oral and written evidence that the Tenants are in rental arrears of \$45.52. As a result, the Tenants are awarded this amount of unpaid rent.

As the Landlord has been successful in this claim, I also award the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$145.52.

As the Landlord holds the Tenants' security deposit of \$350.00, I allow the Landlord to recover the awarded relief by deducting this amount from the Tenants' security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenants failed to appear for the hearing. The Landlord has proved the Tenants have breached the Act by failing to pay full rent for December 2016 and January 2017. Therefore, the Landlord is granted an Order of Possession which is effective two days after it is served on the Tenants. The Landlord is not provided with a Monetary Order but is allowed to deduct the awarded amount of \$145.52 from the Tenants' security deposit in order to recover the rental arrears and the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 30, 2017

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Residential Tenancy Branch