



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

On February 9, 2017 the corporate Landlord made an Application for Dispute Resolution by Direct Request (the "Application") requesting an Order of Possession and a Monetary Order for unpaid rent. The Direct Request process involves a non-participatory hearing in which findings are made on an undisputed notice to end tenancy for unpaid rent and specific documentary evidence a landlord is required to submit with the Application.

The Application was considered by an Adjudicator on February 10, 2017. In an Interim Decision rendered on the same day, the Adjudicator found the Landlord had correctly served the Tenants with the Application for the Order of Possession pursuant to Section 89(2) (d) of the *Residential Tenancy Act* (the "Act"). However, the Landlord's request for a Monetary Order could not be determined because the Landlord had not served the Tenants with the monetary claim pursuant to Section 89(1) of the Act because the Application had been posted to the Tenants' door. The Adjudicator pointed out that the Landlord's monetary claim could be determined in this reconvened hearing if they served the Application to the Tenants in person or by registered mail pursuant to Section 89(1) of the Act prior to this hearing taking place.

In addition, the Adjudicator did not have sufficient evidence to make a finding on whether the corporate Landlord was the correct landlord in this case as the tenancy agreement the Tenants signed was with the owner of the rental unit. Therefore, the Application was adjourned to reconvene in this participatory hearing to determine these matters and decide the Application.

An agent for the Landlord named on the Application appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Tenants during the 20 minute hearing or any submission of evidence from the Tenants prior to the hearing.

The Landlord's agent testified that she had served each Tenant with notice of this reconvened hearing by registered mail on February 24, 2017 after receiving the Interim Decision on February 23, 2017 from the Residential Tenancy Branch. The Landlord's agent provided the Canada Post tracking numbers into oral evidence to verify this method of service. These are detailed on the front page of this Decision.

Section 90(a) of the Act states a document is deemed to have been received five days after it is mailed. Therefore, based on the undisputed evidence before me, I find the Landlord complied with the Interim Decision and served the Tenants with notice of this reconvened hearing pursuant to Section 89(1) (c) of the Act, which I find was deemed to have received by each of the Tenants on February 29, 2017.

The Landlord testified the Tenants were not served with the Application for the monetary claim in person or by registered mail despite the cautions provided by the Adjudicator in the Interim Decision. Accordingly, I informed the Landlord's agent that I was unable to deal with the Landlord's monetary claim because it had not been served to the Tenants pursuant to service requirements of Section 89(1) of the Act. As a result, I continued to determine the Landlord's Application for an Order of Possession only.

#### Issue(s) to be Decided

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

#### Background and Evidence

The Landlord's agent testified that this tenancy started on April 1, 2016 with the Tenants and the owner of the rental unit. A residential tenancy agreement was signed for a fixed term of one year due to expire on March 31, 2017, after which time the tenancy is to continue on on a month to month basis thereafter.

The Landlord provided documentary evidence to show the owner of the rental unit employed the Landlord as the owner's agent for this tenancy. The Landlord's agent testified that this agreement to act as the property managers of the rental unit for the owner started in December 2016.

The Tenants paid the Landlord a security deposit of \$750.00 and a pet damage deposit of \$750.00 on March 24, 2017, both of which the Landlord still retains. Rent for this tenancy is payable by the Tenants in the amount of \$1,550.00 on the first day of each month.

The Landlord's agent testified that the Tenants failed to pay rent for January 2017. As a result, the Landlord registered mailed the Tenants a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on January 3, 2017.

The Landlord provided a copy of the 10 Day Notice into evidence and the Canada Post tracking number to verify service by mail. The 10 Day Notice details a vacancy date of January 20, 2017 due to \$1,550.00 in unpaid rent payable on January 1, 2017.

The Landlord testified that the Tenants continue to occupy the rental unit without paying any rent since January 2017. Therefore the Landlord now seeks an Order of Possession to end the tenancy.

### Analysis

I have carefully considered the undisputed testimony and the documentary evidence before me in this Decision as follows. I accept the undisputed evidence the Landlord named on the Application is an agent of the owner of the rental unit and meets the definition of a landlord as provided for by the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. 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 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 oral and Canada Post evidence before me that the 10 Day Notice was served to the Tenants by registered mail to the rental unit in accordance with Section 88(d) of the Act on January 4, 2017.

There is no evidence before me that the Tenants have paid the outstanding rent on the 10 Day Notice or filed an application to dispute it. As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended. Therefore, the Tenants would have had to vacate the rental unit on January 20, 2017 pursuant to the vacancy date on the 10 Day Notice.

As this date has now passed and the Tenants are still residing in the rental unit without paying rent, 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 Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

Copies of this order for service and enforcement are attached to the Landlord's copy of this Decision. The Tenants may also be held liable for any enforcement costs incurred by the Landlord.

As the Landlord has been successful in obtaining an Order of Possession, I award the Landlord the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. The Landlord may obtain this relief by deducting this amount from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act. The remaining amount of the Tenants' security and pet damage deposits must still be dealt with in accordance with the Act.

### Conclusion

The Tenants have breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession. The Landlord's monetary claim was dismissed with leave to re-apply as it was not determined in this hearing.

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: March 07, 2017

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Residential Tenancy Branch