



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

A hearing was convened to deal with the landlord's application under the *Residential Tenancy Act* (the "Act") for an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities March 7, 2017 (the "10 Day Notice").

Two agents of the landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence and to make submissions.

As the tenants did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The agents provided affirmed testimony that they served the male tenant personally with these materials. I accept that the male tenant was duly served in accordance with the Act. The landlord's agents acknowledge that the female tenant was not personally served with the application or notice of hearing. I also note that the landlord's original application was by direct request, and the adjudicator considering that application found that both tenants had been served with the application for direct request.

The landlord amended its application during the hearing to add a claim for outstanding April and May rent and I accepted the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing with respect to matters that can reasonably be anticipated, such this.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

### Background and Evidence

According to the written tenancy agreement in evidence and the agents' affirmed and undisputed evidence, this tenancy began in July of 2014 and is now a month to month tenancy with rent of \$750.00 payable on the first day of each month. A security deposit of \$375.00 was paid at the beginning of the tenancy and the landlord continues to hold that amount.

The tenancy agreement is between the tenants and a realty management company. However the agents advised that their company has since taken over management of the property. This is consistent with calculations in evidence from the new realty company's accounting department.

The agents testified that the tenants did not pay rent for February or March, 2017. Accordingly, the tenants were served with the 10 Day Notice on March 7, 2017 when it was posted to their door. The 10 Day Notice claimed arrears of \$1,500.00. A Proof of Service document signed by one of the agents and witnessed by the other was included in the landlord's evidence.

The agents further testified that the male tenant made two partial payments in April, totalling \$800.00, but that rent for April and May remains outstanding such that the tenants are now \$2,200.00 in arrears.

### Analysis

The landlord's agents provided undisputed evidence at this hearing, as the tenants did not attend. Based on the landlord's undisputed testimony, I find that the named landlord is now responsible for managing and collecting rent. I further accept that the tenants were served with the 10 Day Notice on March 10, three days after it was posted on their door, in accordance with sections 88 and 90 of the Act.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice or pay the outstanding amount in full within five days of receipt, that tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Here, the tenants did not make an application pursuant to section 46(4) or pay the amount owing on the 10 Day Notice in full within five days of receipt of the 10 Day

Notice. In accordance with section 46(5) of the Act, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on March 21, 2017, the effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7(1) and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence there is currently \$2,200.00 owing. However, as the landlord acknowledged, only the male tenant has been served with the landlord's application. I can only issue a monetary order against the tenant who has been served.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$375.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the security deposit of \$375.00 in partial satisfaction of the monetary claim.

### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord and against the male tenant in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

| Item   | Amount            |
|--|-------------------|
| Rent February – May (\$750 x 4, less \$800.00 paid in April) | \$2,200.00        |
| Filing Fee   | \$100.00          |
| Less Security Deposit  | -\$375.00         |
| <b>Total Monetary Order</b>                                  | <b>\$1,925.00</b> |

I issue a monetary order in the landlord's favour against the male tenant only for \$1,925.00. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial 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*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: May 11, 2017

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Residential Tenancy Branch