



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESIK CONSTRUCTION LTD. C/O WESGROUP PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR OPR MNR MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent as well as to recover his filing fee.

The tenant did not attend although the 9:30 a.m. teleconference continued until 9:42 a.m. The landlord attended this hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she did not receive an Application for Dispute Resolution from the tenant with respect to his application to cancel the notice to end tenancy.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to the tenants on April 10, 2017 by posting the notice on the tenants' door. I accept the evidence of the landlord and find the tenants deemed served with the 10 Day Notice on April 13, 2017 (3 days after its posting) in accordance with section 88 and 90 of the Act.

The landlord also testified that the Application for Dispute Resolution ("ADR") with the notice of hearing was served individually to both tenants on April 28, 2017 by registered mail. The landlord submitted receipts and tracking numbers for this Canada Post mailing. The landlord also provided Canada Post tracking information and receipts to support her testimony that the tenants were individually served with the landlord's secondary evidence package on May 11, 2017. I accept the evidence of the landlord

and find the tenants were each deemed served with the landlord's ADR on May 3, 2017 and the landlord's secondary evidence package on May 16, 2017 (5 days after its mailing) in accordance with section 89 and 90 of the Act.

With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

As the landlord also applied to the Residential Tenancy Branch, this hearing proceeded in the absence of the tenant. In the absence of the tenant's participation in this hearing to support his own application, **I order the tenant's application dismissed without liberty to reapply.**

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord or the tenants entitled to recover the filing fee for this application from the other party?

#### Background and Evidence

The landlord testified that this tenancy began on June 1, 2013. The landlord provided a copy of the residential tenancy agreement showing an original rental amount of \$1300.00 payable on the first of each month. The landlord confirmed that she continues to hold the tenants' \$650.00 security deposit paid at the outset of this hearing.

The landlord testified that the tenant has failed to pay rent on time and in full for a number of months. She testified that the tenant's rent cheque for February was returned for insufficient funds and that the tenant eventually paid the outstanding amount. She testified that the tenant's rent cheque was returned for April 1, 2017. At that time, the landlord issued a 10 Day Notice to the tenant. She testified that the tenant paid April rent on May 1, 2017 and was provided with a receipt for use and occupancy only. The landlord testified that the tenant did not pay May 2017 rent until May 9, 2017 at which time he was provided with a receipt for use and occupancy only.

The landlord testified that the tenant stated that he would vacate the rental unit by May 31, 2017 but that he and his co-tenant still reside in the rental unit as of the date of this hearing. The landlord testified that, as the tenants have not vacated the residence prior to June 1, 2017 the tenants are now required to pay June 2017 rent in the amount of \$1363.00. The landlord testified that she has been provided with a bank draft from the tenant for June 2017 rent but she was uncertain whether she should deposit it.

### Analysis

The tenants failed to pay the April 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants made an application pursuant to section 46(4) of the *Act* however neither tenant attended this hearing in support of their application. In accordance with section 46(5) of the *Act*, the tenants' failure to either pay rent or successfully dispute the 10 Day Notice led to the end of the tenancy. I note that while the tenants paid rent for April 2017 and May 2017 throughout the course of May 2017, the rent was still paid outside of the required timeframe and the landlord supplied a receipt indicating clearly to the tenants that the payments were made for use and occupancy only and not to be considered as an indication that the tenancy was reinstated. **I find that the landlord is entitled to a 2 day Order of Possession for Unpaid Rent.**

The landlord also sought \$1363.00 from the tenants for June 2017 rent. Given that the tenants continue to reside in the rental unit after June 1, 2017, they are responsible to pay the rent for June 2017. Furthermore, even when the tenants vacate the rental unit, the landlord testified it is unlikely that she will be able to re-rent the unit for the month of June 2017. I accept this testimony and **find that the tenants must pay the landlord \$1363.00 for unpaid June 2017 rent.**

The landlord testified that she continues to hold a security deposit of \$650.00 plus any interest from May 8, 2013 to the date of this decision for this tenancy. There is no interest payable for this period. **I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.**

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

### Conclusion

The tenant's application dismissed without leave to reapply.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

June 2017 Unpaid Rent	\$1363.00
Less Security Deposit	-650.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$813.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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*.

Dated: June 02, 2017

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Residential Tenancy Branch