



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remi Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPN, O, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by an agent for the landlord.

I note the landlord has applied for an order of possession based on a landlord's 10 Day Notice to End Tenancy for Unpaid Rent and a tenant's Notice to End Tenancy. However, there was no evidence before me from either party that the tenants ever issued their own notice to end tenancy to the landlord. As such, I have amended the landlord's Application to exclude this issue.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties disagreed on the start date of the tenancy but agreed the tenancy is on a month to month basis and the current rent is \$925.00 due on the 1<sup>st</sup> of each month and the landlord holds a security deposit of \$462.50.

The landlord submitted that the tenants have made the following rental payments for the months of April, May and June 2017:

Date	Rental Period	Amount	Balance Owed
March 23, 2017	April 2017	\$130.00	\$795.00
May 23, 2017	April 2017	\$545.00	\$1,175.00
May 25, 2017	April and May 2017	\$545.00	\$630.00
June 21, 2017	May 2017	\$300.00	\$1,255.00

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on May 3, 2017 indicating an effective vacancy date of May 17, 2017 and citing that the tenants had failed to pay rent in the amount of \$925.00 that was due on April 1, 2017 and May 1, 2017.

The tenants did not dispute any of the landlord's submissions. They did indicate that they have had some financial difficulties recently but are back on track to get their rent caught up. The tenants submitted that they intended to deal with the rental arrears as soon as they possibly could.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

From the landlord's undisputed submissions I find that on May 3, 2017 when the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent the tenants owed the landlord \$1,720.00.

I find, pursuant to Section 90 of the *Act* that the tenants received the landlord's notice 3 days after it was posted on their rental unit door on May 6, 2017.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice. As per the undisputed submissions of the landlord I find the tenants provided their first payment of rent after they received the Notice on May 23, 2017 or 17 days after receipt of the Notice.

There is no evidence before me that, as of the date of this hearing, the tenants had filed an Application for Dispute Resolution seeking to cancel the Notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Based on the above, I find the tenants are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit, pursuant to Section 46(5).

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$462.50 in satisfaction of this claim, pursuant to Section 72(2)(b). I note this leaves a balance of \$362.50 in the security deposit to be dispersed in accordance with the obligations of both parties at the end of the tenancy.

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 21, 2017

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Residential Tenancy Branch