



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, FF

### Introduction

This hearing was convened to deal with the landlord's application under the *Residential Tenancy Act* (the "Act") based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2017. The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent. The landlord also sought recovery of the application filing fee from the tenants.

Both of the tenants and the landlord attended the hearing. Both parties had a full opportunity to be heard, to present affirmed testimony and documentary evidence.

The landlord amended his application during the hearing to add a claim for outstanding June 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. The tenants did not object to the landlord's amendment.

Service of the landlord's application, notice of hearing, and documentary evidence was not at issue. The tenants had not filed any evidence.

### 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?

Is the landlord entitled to recover the application filing fee from the tenants?

### Background and Evidence

According to the written tenancy agreement in evidence and the agreed upon facts, this tenancy began on April 1, 2017 with rent of \$2,000.00 payable on the first day of each month. A security deposit of \$600.00 was paid at the beginning of a prior tenancy agreement, and the landlord continues to hold that amount.

It was agreed that rent is outstanding for April, May, and June.

The landlord testified that he personally served one of the tenants with the 10 Day Notice on May 4, 2017. The landlord further testified that he had served the tenant with a prior 10 Day Notice accidentally dated April 2 instead of May 2, and that the tenant had pointed out the error in the date. Soon after learning of the error, the landlord issued the 10 Day Notice under consideration at this hearing, and served it on the male tenant.

The male tenant acknowledged having received the incorrectly dated 10 Day Notice, and having pointing out the mistake to the landlord. He also said that it was likely he was served with the second 10 Day Notice on or about May 4, 2017, although he did not have it in front of him.

The tenants further acknowledged that they did not file an application to dispute the 10 Day Notice under consideration.

### Analysis

Based on the testimony of both of the parties, I find that the tenants were served with the 10 Day Notice on May 4, 2017.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice or pay the amount owing in full within five days of receipt, the 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 apply within five days of receipt of the 10 Day Notice. Nor have the tenants been able to pay the amounts outstanding. In accordance with section 46(5) of the Act, the failure of the tenants to apply to dispute the 10 Day Notice or pay the amount owing in full within five days led to the end of this tenancy on May 14, 2017, the corrected 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.

Section 7(1) of the Act establishes 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 tenants agreed that they are \$6,000.00 in arrears for April, May, and June, 2017. Therefore, I find that the landlord is entitled to \$6,000.00 outstanding rent and loss of rental income for the above period.

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 tenants' security deposit of \$600.00. 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 tenant's security deposit of \$600.00 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 tenant**. 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 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	\$6,000.00
Filing Fee	\$100.00
Less Security Deposit	-\$600.00
<b>Total Monetary Order</b>	<b>\$5,500.00</b>

I issue a monetary order in the landlord's favour in the amount of **\$5,500.00**. The tenants must be served with this order as soon as possible. Should the tenants 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 s. 9.1(1) of the Act. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 21, 2017

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Residential Tenancy Branch