



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE - PROP MGMT DIV  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the "Application") that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the "Act"), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the "Agent"), who provided affirmed testimony. The Tenants did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that the Application and Notice of Direct Request were sent to each of the Tenants individually, by registered mail, on August 10, 2017, and provided in the documentary evidence before me, copies of the registered mail receipts and a Proof of Service Notice of Direct Request Proceeding for each of the Tenants. As a result, I find that the each of the Tenants was duly served on August 5, 2017, five days after the registered mailing.

The Agent also testified that the Notice of Hearing was sent to each of the Tenants individually, by registered mail, on August 16, 2017, and provided in the documentary evidence before me, copies of the registered mail receipts and a Proof of Service Notice of Direct Request Proceeding for each of the Tenants. As a result, I find that the each of the Tenants was duly served on August 21, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

### Preliminary matters

In the hearing the Agent testified that the Tenants continue to occupy the rental unit, and requested to amend their application to include rent for August and September, 2017. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, the Application is amended to include outstanding rent for August and September, 2017.

The Landlord also requested to amend their Application to include the recovery of the \$100.00 filing fee and the retention of the security deposit to offset any monetary awards that result from this decision. Section 72 of the *Act* states that the Director may order payment or repayment of a fee under section 59(2)(c) [*starting proceedings*] by one party to a dispute resolution proceeding to another party; and that in the case of a payment from a Tenant to a Landlord, the amount may be deducted from any security deposit or pet damage deposit held by the Landlord on behalf of the Tenant. As a result, the Application is amended to include recovery of the filing fee and the retention of the security deposit to offset any monetary awards that result from this decision.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and the recovery of the filing fee pursuant to section 67 of the *Act*?

#### Background and Evidence

In the hearing the Agent testified that the Landlord entered into a month to month tenancy with the Tenants on July 1, 2016. The Agent testified that the monthly rent was \$950.00, due on the first day of the month, and that a security deposit in the amount of \$475.00 was paid by the Tenants, which the Landlord still holds. The Agent also submitted in the documentary evidence before me, a copy of a tenancy agreement matching the above terms.

The Agent testified that on July 1, 2017, the Tenants did not pay the rent as required, and that as a result, a Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was issued.

The Agent submitted a copy of the 10 Day Notice dated July 5, 2017, with an effective vacancy date of July 15, 2017, which indicates that the Tenants failed to pay rent in the amount of \$950.00, which was due on July 1, 2017. The 10 Day Notice also states that the Tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The Agent submitted in the documentary evidence before me, a witnessed

Proof of Service Notice to End Tenancy, indicating that the 10 Day Notice was personally served on the Tenants July 5, 2017.

In the documentary evidence submitted by the Agent, there is an Order of Possession dated March 16, 2017, for the above named Tenant M.J. at the rental address for this dispute. The Order of Possession states that within 2 days of service of the order on the Tenant M.J., the Tenant and all other occupants must deliver full and peaceable vacant possession of the rental unit to a Landlord with a different name than the current Landlord.

I inquired with the Agent why the name of the Landlord on the Order of Possession was different from the name of the Landlord on this Application, and why the Order of Possession had not been enforced by the Landlord. The Agent testified that Landlord listed on the previous Order of Possession is the owner of the rental unit where the Tenants reside, and that they employ the Landlord listed on the Application to manage the property. The Agent also testified that the Landlord chose not to enforce the Order of Possession as the Tenants paid the outstanding rent owed at that time and reinstated the tenancy under the same terms as above.

However, the Agent testified that the Tenants have since been unable to pay the rent, and now owe rent in the amount of \$2,850.00 for July-September, 2017.

### Analysis

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of the rent. When a Tenant does not pay rent when due, section 46 of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 of the *Act*, I find that the Tenants were served with the 10 Day Notice on July 5, 2017, the day it was personally served on them. I also find that the Tenants were obligated to pay the monthly rent of \$950.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenants have failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

As a result, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 15, 2017.

Pursuant to sections 67 and 72 of the *Act*, I find that the Landlord is entitled to a monetary award in the amount of \$2,950.00; \$2,850.00 for unpaid rent and \$100.00 for the recovery of the filing fee.

Pursuant to section 72(2) of the *Act*, I also find that the Landlord is entitled to retain the \$475.00 security deposit paid by the Tenants in full, to offset the monetary award noted above. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$2,475.00.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,475.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: September 18, 2017

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Residential Tenancy Branch