



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord 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 (the “Rules of Procedure”) state that the respondents 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 these documents as explained below.

The Landlord testified that the Application and the Notice of Direct Request Proceeding were personally served on each of the Tenants on July 24, 2017. As a result, I find that the Tenants were duly served these documents on July 24, 2017, the day they were personally served on them.

The Landlord also testified that the Notice of Hearing was sent to each of the Tenants by registered mail on August 9, 2017, and provided the registered mail receipts in the evidence before me. In addition to this, the Landlord testified that they also served each of the Tenants personally, on August 9, 2017. As a result, I find that the Tenants were duly served on August 9, 2017, the date they were personally served with the Notice of Hearing. In any event, I also find that the Tenants would have been deemed served on August 14, 2017, five days after the registered mail was sent.

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

At the outset of the hearing, I identified that the Applicant is not the Landlord listed on the Tenancy Agreement or the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 day Notice”). The Applicant testified that they are the owner of the property rented by the Tenants and that the person listed as the Landlord on the 10 Day Notice and in the tenancy agreement is their agent.

As a result of the above and in the absence of evidence to the contrary, I find that the Applicant meets the definition of a Landlord pursuant to section 1 of the *Act*. As a result, they will be referred to as the “Landlord” in this decision.

At the start of the hearing there was also some question as to whether both of the above named Respondents are Tenants. While both Respondents are named in the tenancy agreement the signatures of both are unclear on the agreement itself. The Landlord testified during the hearing that both named respondents have been Tenants for the duration of the tenancy. As a result of the above and in the absence of evidence to the contrary, I find that both Applicants are tenants pursuant to section 1 of the *Act*.

In the hearing the Landlord testified that the Tenants continue to occupy the rental unit and requested to amend their application to include additional unpaid 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.

The Landlord also requested to amend the application to include recovery of the \$100.00 filing fee and the retention of the security deposit paid by the Tenants to offset any monetary compensation owed by the Tenants to the Landlord as a result of this decision. Section 72 of the *Act* states that the director may order the payment or repayment of a fee under section 59(2)(c) [*starting* proceedings] by one party to the dispute resolution proceeding to another. It also states that if the director orders a Tenant to pay any amount 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. The Application is therefore amended accordingly.

### 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 sections 67 and 72 of the *Act*?

### Background and Evidence

The Landlord confirmed that the tenancy, which began May 1, 2017, is a one year fixed-term tenancy with an end date of April 30, 2018. The total rent in the amount of \$2030.00 is due on the first day of each month, which is comprised of \$1980.00 for rent and \$50.00 for parking. A security deposit in the amount of \$990.00 was paid by the Tenants on April 28, 2017, and the Landlord testified in the hearing that they still hold this deposit.

The Landlord testified that the Tenants did not pay the rent as required on July 1, 2017, and subsequently a 10 Day Notice was served on the Tenants.

The 10 Day Notice in the documentary evidence before me indicates that on July 1, 2017, the Tenants failed to pay rent in the amount of \$2030.00. The 10 Day Notice has an effective vacancy date of July 16, 2017, and indicates that it was served on the Tenants by being posted to the door of the rental unit. The 10 Day Notice states that the Tenant 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 Landlord submitted into the documentary evidence before me, a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") which indicates that the 10 Day Notice was served on the Tenants on July 8, 2017, in the manner described above.

In the hearing the Landlord testified that at the time of the application, the Tenants owed \$6,090.00 in unpaid rent for July, August, and September, 2017. However, the Landlord testified that since that time, partial rent payments have been made as follows:

- \$1000.00 paid August 4, 2017;
- \$1050.00 paid August 8, 2017;
- \$1400.00 paid September 1, 2017;
- \$500.00 paid September 5, 2017; and
- \$1000.00 paid September 6, 2017.

As a result of the above, the Landlord testified that the Tenants currently owe \$1140.00 in outstanding rent.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) 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 effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on July 11, 2017, three days after it was attached to the door of their rental unit. I also find that the Tenants were obligated to pay the monthly rent, 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.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 21, 2017.

As a result of the above, I find that the Landlord is entitled to an Order of Possession. I also find that the Landlord is entitled to retain the security deposit paid by the Tenants in full, pursuant to section 72 of the *Act*.

As a result, I find that the landlord is entitled to a Monetary Order in the amount of \$250.00; \$1140.00 for rent owed as of the date of the hearing, less the \$990.00 security deposit, and \$100.00 for the recovery of the filing fee pursuant to section 72 of the *Act*.

### 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 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$250.00. 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 25, 2017

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Residential Tenancy Branch