



# 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 as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on December 29, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord's agent and the Landlord both attended the hearing and provided affirmed testimony. The Landlord's agent provided the bulk of the testimony. The Tenants did not attend the hearing. The Landlords testified that they hand delivered a Notice of Hearing package to each of the Tenants on October 24, 2017. I find the Tenants received this package that same day.

The Agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agent is requesting to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application 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 for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Agent to amend his application to include rent that has accrued since the original application date.

### Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

The agent testified that monthly rent is \$900.00, and is due on the first of the month.

The Agent testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) by leaving a copy of it at the front door of the rental unit on September 2, 2017. The amount owing at that time was \$6,760.00. The Agent stated that he personally delivered this document, and brought a third party with him as a witness. Further, the Agent stated that when he spoke with the Tenants after he delivered the Notice, it was evident that they got the Notice, and were aware that rent was overdue. Pursuant to section 90 of the Act, I find the Tenants received the Notice on September 5, the third day after it was left at their front door.

The Agent provided oral testimony and documentary evidence with respect to rent payments and accruals. This evidence shows that the Tenants have failed to pay rent for many months. The Tenants still owe \$60.00 from January 2017. They also failed to pay any rent for February, March, April, May, and June of 2017. In July they paid \$500.00 on the first but the Landlords have received no money from the Tenants since this partial payment in July 2017. In total, the Landlord provided evidence to show that the Tenants have failed to pay a total of \$9,460.00 in past due rent over the last year.

### Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

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 rent. When a tenant does not pay rent when due, section 46(1) 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, under section 46(4) of the *Act*, 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, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed past due rent at the time the Notice was issued on September 2, 2017. The landlord issued the Notice by leaving it at the front door of the rental unit on September 2, 2017, and I find the tenants are deemed to have received the Notice on September 5, 2017, 3 days after, pursuant to section 90 of the *Act*.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized above, I find there is sufficient evidence before me to demonstrate that the tenants owe and have failed to pay \$9,460.00 in past due rent.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was successful in this hearing, I also order the tenants to repay the \$100.00 fee the agent paid to make the application for dispute resolution. In summary, I find the agent is entitled to a monetary order in the amount of \$9,560.00.

### Conclusion

The landlord is granted 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.

The landlord is granted a monetary order pursuant to Section 67 in the amount of \$9,560.00. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 29, 2017

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Residential Tenancy Branch