



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FINCAP CAPITAL INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The landlord's agents (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord provided undisputed evidence that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 19, 2017 and has provided a copy of the Canada Post Receipt, Tracking labels and a copy of the returned envelope which states that the package was returned after several attempts of service as "unclaimed". I accept the undisputed evidence of the landlord and find pursuant to section 90 of the Act that the tenants are deemed properly served even though the package was "unclaimed". The landlord also provided undisputed evidence that the tenants still occupy the rental premises.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?  
Is the landlord entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that a tenancy agreement was made to begin on September 15, 2016 for a month-to-month tenancy. The monthly rent was \$1,250.00 payable on the 1<sup>st</sup> day of month. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were paid.

The landlord claims that the tenants were served with 10 Day Notice to End Tenancy (the 10 Day Notice) dated September 6, 2016 by posting it to the rental unit door on September 6, 2017. The 10 Day Notice sets out that the tenants failed to pay rent of \$2,465.00 that was due on September 1, 2017 and an effective end of tenancy date of September 16, 2017.

In support of these claims the landlord has provided:

- Copy of 10 Day Notice dated September 6, 2017
- Copy of completed Proof of Service document for 10 Day Notice
- Copy of Accounting spreadsheet detailing rent owed

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed evidence of the landlord and find that the tenants were properly served with the 10 Day Notice dated September 6, 2017 by posting it to the rental unit door on September 6, 2017.

I accept the undisputed evidence of the landlord that the tenants upon receiving the 10 Day Notice failed to pay the rent within the allowed timeframe and that the tenants still occupy the rental premises as of the date of this hearing.

I find that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the

tenants to vacate the premises by September 19, 2017. This is a corrected date as the 10 Day Notice was posted to the rental unit door on September 6, 2017 and pursuant to section 90 of the Act is deemed served 3 days later. As the tenants still occupy the rental premises, I find that the landlord is entitled to a two-day order of possession.

The landlord having been successful in the application is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is also granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: January 03, 2018

---

Residential Tenancy Branch