



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The hearing was convened by telephone conference call and was attended by the Landlord D.B., 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 Hearing were personally served on the Tenants on December 31, 2017, in the presence of a witness. As a result, I find that the Tenants were personally served on December 31, 2017.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision. At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing.

### Preliminary Matters

At the outset of the hearing, the Landlord identified that she had three witnesses present with her. I advised the Landlord that the witnesses would need to be excluded from the proceedings until called upon to provide testimony. The Landlord obliged, removing herself from speaker phone and exiting the room in which the witnesses were located.

The Landlord disclosed that they intended to call the witnesses regarding the tenancy in general but not the service of documentary evidence, the 10 Day Notice, or the payment of rent. As a result, I determined that it was unnecessary to call the witnesses to provide any testimony in the hearing and advised the Landlord that the witnesses would not be called. The Landlord stated that she still wished for me to hear the witness testimony, despite the fact that it did not relate to the claims sought in the Application.

I advised the Landlord that pursuant to section 6.2 of the Rules of Procedure, the hearing is limited to matters claimed on the Application and that I may refuse to consider unrelated issues. The Rules of Procedure define relevant evidence as evidence that relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. As the matter at hand is whether the Landlord is entitled to an Order of Possession for unpaid rent, I find that testimony unrelated to the service of documentary evidence, the 10 Day Notice, or the payment of rent is not relevant evidence as defined by the Rules of Procedure. I therefore exercised my discretion not to call any of the Landlord's witnesses to provide testimony.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the Act?

### Background and Evidence

The Landlord testified that they purchased the property on November 9, 2017, from the previous Landlords and that the Tenants resided in the rental unit at that time. The Landlord testified that rent is \$900.00 and is due on the first day of each month. The Landlord stated that when the Tenants failed to pay the rent as required on December 1, 2017, they served a 10 day Notice by posting it to the door of the rental unit on December 18, 2017.

The 10 Day Notice in the documentary evidence before me, dated December 18, 2017, has an effective vacancy date of December 31, 2017, and states that as of December 9, 2017, the Tenants owed \$900.00 in outstanding rent.

The Landlord testified that since the 10 day Notice was served, the Tenants have continued to reside in the rental unit and have not paid any rent. As a result, the Landlord stated that the Tenants currently owe \$2,700.00 in outstanding rent for December, 2017, and January and February, 2018.

### 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 December 21, 2017, three days after it was posted to the door of their rental unit. I also find that the Tenants were obligated to pay the monthly rent in the amount of \$900.00, 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.

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 effective date of the 10 Day Notice, December 31, 2017, and the Landlords are therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and the Tenants are currently several months behind on rent, pursuant to section 68(2)(a) of the *Act*, the Order of Possession will be effective two days after service on the Tenants.

### Conclusion

The Landlords are granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenants. The Landlords are 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 Supreme Court of British Columbia 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: February 27, 2018

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Residential Tenancy Branch