



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was scheduled for a participatory hearing. The Landlords filed under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Agent’s assistant (the “Assistant”) was also in attendance but he only assisted the Agent and did not provide any evidence or testimony during the hearing. 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 (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 Agent testified that each of the Tenants was sent a copy of the Application and the Notice of Hearing by registered mail at the dispute address on February 4, 2018. The Agent provided a copy of the registered mail receipt and both registered mail tracking numbers. As a result, I find that the Tenants were deemed served with the Application and the Notice of Hearing on February 9, 2018, five days after the documents were sent to them by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the Decision and Orders issued in favor of the Landlords will be e-mailed to him at the e-mail address provided in the hearing.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Landlords entitled to a Monetary Order for the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Agent testified that the tenancy began at least one year ago and that although there is no written tenancy agreement, there is a verbal agreement in place for the Tenants to pay \$650.00 a month for the rental of a self-contained basement suite in the Landlords' home. The Agent testified that rent is due on the first day of each month and that when the Tenant's filed to pay rent on January 1, 2018, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was posted to the door of their rental unit on January 15, 2018. In support of this testimony the Agent submitted a witnessed and signed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (the "Proof of Service") confirming that the 10 Day Notice was served in the manner described above.

The 10 Day Notice in the documentary evidence before me, dated January 15, 2018, has an effective vacancy date of January 25, 2018, and states that as of January 1, 2018, the Tenant's owed \$650.00 in rent.

The Agent testified that the Tenants continue to reside in the rental unit and that no rent has been paid for January, February, or March of 2018.

The Tenants did not attend to provide any testimony or evidence for my consideration.

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 January 18, 2018, 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 \$650.00, on time and in full each month.

Given that the Tenants were deemed served with the 10 Day Notice on January 18, 2018, I find that the effective vacancy date of January 25, 2018, listed on the 10 Day Notice is incorrect as it is less than 10 days after the date the Tenants were deemed to have received the 10 Day Notice. As a result, I find that the effective vacancy date of the 10 Day Notice is there automatically corrected to January 28, 2018, pursuant to section 53 of the *Act*.

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, January 28, 2018, and the Landlords are therefore entitled to an Order of Possession effective two days after service on the Tenants.

I also find that the Landlords are entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

### 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.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$100.00. 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 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: March 29, 2018

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Residential Tenancy Branch