



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1055401 BC Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to an application for dispute resolution (the “Application”) by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the Application and notice of hearing (the “Materials”) by registered mail on February 23, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on February 28, 2018. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the Landlord made its Application too early?

### Background and Evidence

The tenancy, under written agreement, started on December 1, 2015. The Applicant is the owner of the unit. The Applicant is represented by its Agent. The company of the owner's Agent, is named on the tenancy agreement as the Landlord. Rent of \$1,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. The Tenants failed to pay rent for February 2018 and on February 9, 2018 the Landlord served the Tenants with a 10 day notice to end the tenancy for unpaid rent (the "Notice") by registered mail. The Tenants did not dispute the Notice and did not pay the rents owed. The Landlord applied for an order of possession on February 19, 2018. The Landlord does not know whether the Tenants are still in the unit.

### Analysis

Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed.

Based on the Landlord's evidence that the Notice was served by mail on February 9, 2018 I find that the Notice is deemed received on February 14, 2018 and that the Tenant's time for making the application to dispute the Notice expired by the end of the business day on February 19, 2018. As the Landlord made its Application on this date I find that the Landlord applied too early. I therefore dismiss the Application with leave to reapply.

Conclusion

The Application is dismissed with leave to reapply.

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: May 02, 2018

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Residential Tenancy Branch