



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MND MNDC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on July 17, 2018. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord testified that he personally gave the application and evidence package to an adult who apparently resided with the Tenants. The Landlord stated that the adult appeared to be living there, and answered the door. The Landlord left this package on May 29, 2018. I find the Tenants were served this day. Pursuant to section 89 of the Act, I find the Landlord has sufficiently served the Tenants with his application and evidence with respect to his application for an order of possession. However, I do not find this method of service is sufficient for the monetary portions of the Landlord's application. I encourage the Landlord to utilize registered mail or personal service for any future monetary application.

Given the method of service utilized by the Landlord for his application and evidence, I dismiss all of the Landlord's application, with leave to reapply, except for his application for an order of possession.

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.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to recover the filing fee from the Tenants for the cost of this application?

### Background and Evidence

The Landlord testified that current rent is \$1,850.00, and is due on the first day of each month. The Landlord does not hold a security deposit.

The Landlord testified that the Tenants still owe \$100.00 in rent from February 2018. The Landlord stated that the Tenants also owe \$1,850.00 for March 2018. The Landlord stated that the Tenants paid \$1,000.00 in April but still owe \$850.00 for that month. Also, the Landlord stated that the Tenants did not pay any rent in May 2018, and still owe \$1,850.00 for that month as well.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), both pages of which were sent by registered mail on May 5, 2018, to the rental unit. The 10 Day Notice specified that \$4,650.00 was unpaid at that time.

The Landlord testified that the Tenants have not paid any money since the 10 Day Notice was issued.

### Analysis

Based on the unchallenged 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 after receipt, under section 46(4) of the *Act*, 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 Tenants had a balance of unpaid rent in the amount of \$4,650.00 at the time the 10 Day Notice was issued. On May 5, 2018, the 10 Day Notice was sent to the Tenants by registered mail. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 5 days. I find the Tenants are deemed to have received the 10 Day Notice on May 10, 2018.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. I find 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.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenants to repay the \$100.

### 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 **\$100.00**. 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: July 17, 2018

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Residential Tenancy Branch