



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, MND, FF

### Introduction

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

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on June 18, 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 June 23, 2018. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of an entire house with an upper and lower level, under written agreement, started on June 1, 2018 for a fixed term to end June 1, 2019. Although no date for rent being payable is indicated on the tenancy agreement, the Tenants were verbally informed that rent of \$2,950.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,450.00 as a security deposit. The Tenants failed to pay rent on June 1, 2018 and on June 6, 2018 the Landlord served the Tenants in person with a 10 day notice to end the tenancy for unpaid rent (the "Notice"). The Tenants did not dispute the Notice and have not moved out of the unit. The Tenants paid \$1,025.00 on June 15, 2018, \$1,050.00 on July 1, 2018, and \$1,050.00 on August 1, 2018. The Landlord gave the Tenants a receipt for each of these payments indicating that the rents were accepted for use and occupancy only. The Landlord claims unpaid rent and an order of possession effective as soon as possible.

### Analysis

Section 46(5) of the Act provides that if a tenant who has received a 10 day notice for unpaid rent does not pay the rent or make an application for dispute resolution within 5 days receipt of the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date. 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 paid the 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. Given the undisputed evidence that the Tenants received the Notice, did not dispute the Notice or pay the full rent, and have not moved out of the unit I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is payable until a tenancy ends. A tenancy ends when a unit is vacated. Based on the undisputed evidence that the Landlord received \$1,050.00 for August 2018 rent and calculating the per diem rent at \$95.16, I consider that the Landlord has received rent to August 11, 2018. As the Landlord requested and was granted an order of possession for as soon as possible and as the Tenants must vacate the unit within 2 days of being served the order of possession, I decline to award additional unpaid rent for August 2018. Should the

Tenants remain in the unit past August 11, 2018, the Landlord has leave to reapply for lost rental income. Based on the undisputed evidence that the Tenants did not pay the full rent owed for June and July 2018 I find that the Landlord is entitled to **\$1,925.00** for June 2018 and **\$1,900.00** for July 2018 rent.

As the Landlord's application had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,925.00**. Deducting the security deposit plus zero interest of **\$1,450.00** from the entitlement leaves **\$2,475.00** owed to the Landlord.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$1,450.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,475.00**. If necessary, this order may be filed in the Small Claims 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: August 07, 2018

---

Residential Tenancy Branch