



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EQUITEX MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC OPR FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities and cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by its agent (the "landlord") who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice"), dated June 7, 2018 was served on the tenants by posting on the rental unit door on that day. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on June 10, 2018, three days after posting.

The landlord testified that the landlord's application for dispute resolution dated June 25, 2018 was served on each of the tenants by registered mail sent on June 27, 2018. The landlord provided two Canada Post tracking numbers as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were each deemed served with the landlord's application on July 2, 2018, five days after mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for the application?

### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in February, 2018. The monthly rent is \$2,800.00 payable on the first of each month. The tenants paid a security deposit of \$1,400.00 at the start of the tenancy which is still held by the landlord.

The landlord testified that the tenancy was in arrears by \$2,907.10 at the time that the 10 Day Notice was issued on June 7, 2018. The landlord testified that the tenant did not make full payment against the arrear within 5 days of being served with the Notice. The landlord said that a payment of \$2,800.00 was received on June 18, 2018 but that payment was accepted for use and occupancy only and did not reinstate the tenancy. The landlord submitted into evidence the receipt issued for that payment.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$2,800.00. I accept the evidence before me that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. I further find that the payment of June 18, 2018 did not reinstate the tenancy and the landlord clearly indicated to the tenants that payment was accepted for use and occupancy only. Accordingly, 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, June 20, 2018. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee for this application. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' \$1,400.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$1,400.00 to \$1,300.00.

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 20, 2018

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Residential Tenancy Branch