



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1151840 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNRL-S, OPR (Landlord)  
CNR, FFT (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application July 10, 2018 (the “Tenants’ Application”). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2018 (the “Notice”). The Tenants sought reimbursement for the filing fee.

The Landlord filed their application July 16, 2018 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the Notice. The Landlord also sought compensation for monetary loss or other money owed, to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

C.C. and B.S. (the “Agents”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agents and neither had questions when asked. The Agents provided affirmed testimony.

The Agents clarified the rental unit address and I amended the Application. The amendment is reflected on the front page of this decision.

The Agents withdrew the application for compensation for monetary loss or other money owed.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agents testified as follows. The hearing package was sent to the rental unit to all three Tenants separately by registered mail on July 17, 2018. Three packages of evidence were served on Tenant D.G. personally on August 20, 2018. Tenant D.G. was at the rental unit at the time. Tenant D.G. indicated he would accept the packages for all three Tenants.

Three Canada Post customer receipts had been submitted as evidence. The receipts are addressed to the Tenants and refer to the rental unit. They include Tracking Number 1, 2 and 3 as noted on the front page of this decision. With permission, I looked these up on the Canada Post website. All three packages were delivered and signed for by Tenant S.G. July 19, 2018.

Based on the undisputed testimony of the Agents, the evidence submitted and the Canada Post website information, I find the hearing packages were served on the Tenants in accordance with sections 59(3) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”) and rule 3.1 of the Rules of Procedure (the “*Rules*”).

Based on the undisputed testimony of the Agents, I find the evidence was served on the Tenants in accordance with sections 88(a) and 88(e) of the *Act*. Further, I find the evidence was served in sufficient time to allow the Tenants to prepare for the hearing.

I also note the Tenants would have been aware of the hearing as the Tenants’ Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants.

Rule 7.3 of the Rules states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing. Given the Tenants never appeared for the hearing, I have no evidence before me as to the basis for their dispute of the Notice. In the absence of evidence from the Tenants, the Tenants’ Application is dismissed without leave to re-apply.

The Agents were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord had submitted a written tenancy agreement. It is between a different landlord and the Tenants in relation to the rental unit. The Agents testified that the Landlord purchased the rental unit February 15, 2018 and therefore became the landlord. The tenancy started October 8, 2017 and is for a fixed term of one year ending October 8, 2018. Rent is \$2,500.00 per month due on the first day of each month. A security deposit of \$1,250.00 was paid. The agreement has an addendum. The agreement is signed by the previous landlord and the Tenants.

The Notice states the Tenants failed to pay \$2,500.00 rent due July 1, 2018 and \$700.00 for utilities due July 1, 2018. It is addressed to the Tenants and refers to the rental unit. It is signed and dated July 4, 2018 by an agent for the Landlord. It has an effective date of July 14, 2018.

B.S. testified as follows. The Tenants failed to pay July rent by July 1, 2018. He served the Notice on Tenant S.G. at the rental unit in person on July 4, 2018. The Tenants never paid the outstanding rent and never paid the outstanding utilities.

The Landlord had submitted a Proof of Service stating the Notice was served on Tenant S.G. personally on July 4, 2018. The Proof of Service is signed by a witness.

The Agents testified that the Tenants have not paid any rent since July when the Notice was issued. C.S. testified that the Tenants did not have authority under the Act to withhold rent.

C.S. said the Landlord is not relying on the outstanding utilities on the Notice. He said the Landlord is seeking unpaid rent for July and August only.

The Residential Tenancy Branch records indicate the Tenants filed the Tenants' Application July 10, 2018.

## Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where a tenant has failed to pay rent. The relevant portions of section 46 state:

- 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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...

Section 55(1) of the *Act* requires me to issue an Order of Possession when tenants have disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the undisputed testimony of B.S., and the written tenancy agreement, I find the Tenants were obligated to pay \$2,500.00 for July rent by July 1, 2018. I accept the undisputed testimony of C.S. that the Tenants did not have a right to withhold rent under the *Act*. Therefore, I find the Tenants were required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the undisputed testimony of B.S. that the Tenants did not pay rent for July by July 1, 2018. Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*. Based on the undisputed testimony of B.S., and the Proof of Service, I find the Tenants were served with the Notice in accordance with section 88(a) of the *Act*. I also note the Tenants must have received the Notice as they disputed it.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice on July 4, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Agents that the Tenants did not pay any outstanding rent after the Notice was issued. The Tenants did dispute the Notice on July 10, 2018. This was outside the time limit for disputing the Notice under section 46(4) of the *Act*. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on July 14, 2018, the effective date of the Notice.

Even if the Tenants did dispute the Notice in time, the Tenants failed to appear at the hearing and provide a basis for disputing the Notice and I have dismissed the Tenants' Application without leave to re-apply. Given I dismissed the Tenants' Application, and found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*.

I find the Landlord is entitled to an Order of Possession and grant the Landlord this Order. The Order is effective two days after service on the Tenants.

I accept the undisputed testimony of the Agents that the Tenants have not paid rent for July or August. The Landlord has only requested to recover \$5,000.00 in unpaid rent which is less than what is stated in the Landlord's Application. I find the Landlord is entitled to recover the \$5,000.00 in unpaid rent.

As the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to monetary compensation in the amount of \$5,100.00. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$1,250.00 security deposit to offset the monies owed. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,850.00.

### Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlord's Application is granted.

The Landlord is granted an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$5,100.00. I authorize the Landlord to keep the \$1,250.00 security deposit to offset the monies owed. I grant the Landlord a Monetary Order in the amount of \$3,850.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: September 10, 2018

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Residential Tenancy Branch