



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR, OPR, OPB, MNSD, MNR, FF

### Introduction

This hearing was scheduled in response to cross applications.

On May 20, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that on May 20, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to each Landlord, via registered mail. The Landlord stated that she and the male Landlord have viewed the documents.

On June 11, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, an Order of Possession for breaching an agreement; for a monetary Order for unpaid rent; to retain all or part of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on June 20, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to each Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession or should the Notice to End Tenancy for Unpaid Rent be set aside?

Is the Landlord entitled to a monetary Order for unpaid rent and to retain the security deposit?

## Background and Evidence

The Landlord and the Tenant agree the Tenants are jointly required to pay monthly rent of \$1,150.00 by the first day of each month and that no rent has been paid for May, June, or July of 2014. The parties agree that the Tenant told the Landlord that rent for May would be paid on May 28, 2014, and that the Landlord told them the delay was not acceptable. The parties agree that the Tenant offered to pay a portion of the rent for May and the Landlord advised the Tenant that she did not wish to accept a partial payment.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated May 20, 2014, was mailed to the Tenant on May 20, 2014. The male Tenant stated that this document was personally served to the Tenant on May 20, 2014. The parties agree that the Notice declared the Tenant must vacate the rental unit by May 30, 2014.

As I determined this tenancy was ending pursuant to section 46 of the *Act*, I concluded that there was no need to determine whether the tenancy should also end because the Tenants breached an agreement. The Landlord was informed of this decision but in spite of that information she repeatedly attempted to discuss further problems with the tenancy. She was advised that further discussion was not warranted and, after repeatedly refusing to follow my direction in this regard, she was placed in "mute mode" for approximately two minutes.

## Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required them to pay monthly rent of \$1,150.00 by the first day of each month. Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord.

On the basis of the undisputed evidence, I find that the Tenants did not pay rent when it was due on May 01, 2014 and that the rent has not yet been paid for May. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,150.00 in rent for May of 2014.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Tenant received a Ten Day Notice to End Tenancy, dated May 20, 2014, which required to Tenant to vacate the rental unit on May 30, 2014. As the Tenant filed an Application for Dispute Resolution on May 20, 2014, in which they applied to cancel this Notice, I find it reasonable to conclude that they received it on May 20, 2014.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I find that the Tenants did file

an Application for Dispute Resolution within the five day period, but they did not pay the outstanding rent.

As the Tenants did not pay rent when it was due and the Landlord served the Tenants with proper notice to end the tenancy, I find that the Landlord has the right to end the tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenants' application to set aside the Notice to End Tenancy and I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Notice, which was May 30, 2014, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days the Tenants remained in possession of the rental unit. As the Tenants remained in the rental unit for the entire month of June, I find that the Tenants must pay rent of \$1,150.00 for that month.

As the Landlord has opted to have the Tenants vacate the rental unit prior to July 31, 2014, I find that the Landlord is not entitled to rent for the full month of July. The parties were advised that the Order of Possession will be effective on July 15, 2014 and I therefore find that the Landlord is entitled to 15 days of rent, at a per diem rate of \$37.10, which equates to \$556.50.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing an Application for Dispute Resolution. I find that the Tenants' application has been without merit and I dismiss the Tenants' application to recover the fee for filing an Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective at **1:00 p.m. on July 15, 2014**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,906.50, which is comprised of \$2,856.50 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$575.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,331.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: July 07, 2014

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Residential Tenancy Branch