



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNSD, MNDC, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord provided documentary evidence to confirm each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 28, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the testimony and evidence of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

I note that while the landlord had submitted a monetary order worksheet prior to the hearing to update her claim to include additional months of unpaid rent and administrative fees she also sought to increase her claim for additional rent due to additional occupants and previously unclaimed utility charges.

As the landlord did not submit an Amendment to Dispute Resolution Application I decline to amend the landlord's Application to include these additional charges. I do allow the additional months of unpaid rent and administrative fees as they are included solely as a result of the delay between the submission of the Application and the scheduling of the this hearing.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; liquidated damages; administrative fees; registered mail costs; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

## Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 9, 2015 for a 1 year fixed term tenancy beginning on April 1, 2015 for the monthly rent of \$1,350.00 due on the 1<sup>st</sup> of each month with a security deposit of \$675.00 paid. The agreement also stipulated that if the tenants caused the tenancy to end before the end of the fixed term they would be required to pay the landlord liquidated damages in the amount of \$1,350.00. Additionally, the agreement contained a clause allowing the landlord to charge an administration fee of \$25.00 for the late payment of rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 14, 2015 with an effective vacancy date of November 30, 2015 due \$1350.00 due on November 1, 2015.

Documentary evidence and testimony provided by the landlord indicates the tenants failed to pay the full rent owed for the months of October and November 2015 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent registered mail on November 14, 2015.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenants have also not paid any rent for the months of December 2015 and January 2016.

## Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on November 19, 2015 and the effective date of the notice was November 30, 2015. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Based on the landlord's undisputed evidence and testimony I find the tenants have failed to pay rent for the month of October 2015 in the amount of \$350.00; for the months of November 2015, December 2015, and January 2015 in the amount of \$4,050.00.

I also find the landlord is entitled late payment fees for each of the 4 months noted above in the amount of \$100.00. I find the landlord is also entitled to \$1,350.00 for the liquidated damages as per clause 5 of the tenancy agreement.

Conclusion

I find the landlord is entitled to 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,900.00** comprised of \$4,400.00 rent owed; \$1,350.00 liquidated damages; \$100.00 administrative fees and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$675.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,225.00**. 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: January 20, 2016

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Residential Tenancy Branch

