



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, CNR, RR**

### **Introduction**

This was a cross-application hearing.

The tenants applied to cancel a 10 day Notice to end tenancy for unpaid rent issued on November 20, 2015; received on November 23, 2015. The tenants asked for more time to cancel the Notice and for a rent reduction Order.

The landlord applied requesting an Order of possession for unpaid rent and an Order of possession based on the 10 day Notice to end tenancy for unpaid rent issued on November 20, 2015.

The landlord provided affirmed testimony that on December 12, 2015 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to each tenant. The landlord checked with a neighbour of the rental unit last week and established that the tenants are in the rental unit. The tenant failed to claim the registered mail.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act. Neither tenant attended the hearing in support of their application.

### **Preliminary Matters**

Pursuant to section 8.4 of the Act that landlord's application was amended to include the loss of rent revenue to January 31, 2016. This amendment is not prejudicial to the tenants as rent is the most basic term of a tenancy and the tenants, by way of their application, have indicated they did not plan to vacate the rental unit.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

### **Background and Evidence**

The tenancy commenced on October 1, 2015. Rent is \$900.00 per month, due on the first day of each month. There is no signed tenancy agreement. The landlord did not receive a security deposit.

The landlord stated that his agent personally served the tenants a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 1, 2015. The Notice was given personally; the tenants disputed the Notice on November 23, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$900.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

In October the tenants paid \$550.00; no rent has been paid since that time. The landlord is claiming compensation for rent owed from October 2015 to January 2016, inclusive totaling \$3,050.00.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, as the tenants' application for dispute resolution declares they received the notice on November 23, 2015 I find that was the date of service to the tenants.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants confirmed they received this Notice on November 23, 2015, I find that the earliest effective date of the Notice is December 3, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 3, 2015.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on December 3, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants disputed the Notice but failed to attend this hearing in support of their application. Therefore, I find that the tenant's application is dismissed.

Pursuant to section 46(5) and 55(1) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice and that the landlord is entitled to an Order of possession.

In the absence of evidence to the contrary, I find that the tenants have not paid rent and per diem rent in the amount of \$3,050.00 from October 2015 to January 31, 2016 and that the landlord is entitled to compensation in that amount. The landlord is entitled to per diem rent to the end of January 2016 as it is unlikely he will obtain possession of the unit before that time.

As the landlord has paid a \$50.00 filing fee and the application has merit, I find, pursuant to section 72 of the Act that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of Possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,100.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and per diem rent.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2016

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Residential Tenancy Branch

