



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on November 27, 2017. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the Tenant for the cost of this application.

Both of the Landlords attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The Landlords testified that they sent the Notice of Hearing package to the Tenants by registered mail on September 21, 2017. I find the Tenants received this package on September 26, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

In the hearing, the Landlords stated that the Tenants no longer owe any money at this time, and they are only seeking an order of possession. As such, I amend the Landlords' application accordingly to only consider this ground.

The Landlords were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent or utilities?

### Background and Evidence

The Landlords testified that current rent is \$1,350.00, and is due on the first day of each month.

The Landlords testified that the Tenants failed to pay rent in full and on time for September of 2017. The Landlords provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was hand delivered to the Tenants on September 6, 2017. Service of this document was witnessed by a third party. The 10 Day Notice specified that \$350.00 was still unpaid at that time.

During the hearing, the Landlords clarified that the Tenants paid \$600.00 on September 1, 2017, and \$400.00 on September 5, 2017. After only receiving \$1,000.00, the Landlords personally served the Tenants with a 10 Day Notice, given that they still owed \$350.00 for September. The Landlords testified that the Tenants paid \$450.00 on September 12, 2017.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlords to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenants had a balance of unpaid rent in the amount of \$350.00 at the time the 10 Day Notice was hand delivered to them on September 6, 2017.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenants paid \$450.00 on September 12, 2017, they did not pay this amount within the 5 day period allowed under the *Act*. As the Tenants did not pay in full by September 11, 2017, I find the Tenants are conclusively presumed to have accepted

the end of the tenancy, on the effective date of the notice. The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

### Conclusion

The Landlords are granted 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 Landlords may file the order with the Supreme Court of British Columbia 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: November 27, 2017

---

Residential Tenancy Branch