



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, FF, O

### Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and other issues. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; authority to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

I determined the tenants did not serve their evidence upon the landlord. The tenants' evidence consisted of the 10 Day Notice served upon them. I determined the Notice provided by the tenants was the original copy served upon the tenants. I also determined the landlord's copy of the Notice was a manual reproduction of the tenants' Notice. I compared the two Notices and verified the information with the parties. As the information conveyed on both Notices was the same in all material aspects I accepted both Notices as evidence.

### Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for unpaid rent, and if so, the amount?
4. Is the landlord entitled to retain the security deposit?

### Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced August 1, 2007 and the tenants paid a security deposit of \$375.00 on July 15, 2007. The tenants are required to pay rent of \$750.00 on the 1st day of every month. The tenants have not paid rent for the months of March through July 2010. On June 4, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicated rent for June was unpaid and an effective date of June 14, 2010. The Notice also provided a notation that back rent was owed for March, April and May 2010.

The landlord's evidence indicates the Notice was personally served upon the male tenant on June 4, 2010 in the presence of a witness but that the tenant would not sign to acknowledge receipt of the Notice. The male tenant testified the landlord threw the Notice at the tenant through the entrance of the rental unit. The tenants disputed the Notice on June 10, 2010. I accepted that the Notice was served on June 4, 2010; however, I granted the tenants one more day to dispute the Notice. Accordingly, I proceeded to hear both applications.

I was provided evidence that the parties participated in a previous dispute resolution proceeding (file no. 753061) on June 1, 2010 with respect to the landlord's application for an Order of Possession and Monetary Order for unpaid rent for March and April 2010. The landlord's application pertained to a 10 Day Notice issued March 20, 2010. A decision was issued June 1, 2010 and upon review of that decision I note the following key elements. The tenants had verbally submitted they had an agreement with a former resident manager to work at the residential property in exchange for rent and that the former manager had taken away the March 20, 2010 Notice and said he would "look after" the disagreement with the landlord about payment of rent for March and April 2010. The tenants were of the position they were not served with the March 20, 2010 Notice. The landlord denied an agreement for work in exchange for rent was

in place but did not produce the resident manager to rebut the tenants' submissions. As a result, the Dispute Resolution Officer (DRO) did not find sufficient evidence of service of the Notice and dismissed the landlord's request for an Order of Possession. The DRO dismissed the landlord's claim for rent for the months of March and April 2010.

Upon enquiry, the tenants initially testified that they have not paid rent in order to get the landlord to make repairs to the rental unit but acknowledged they did not have the landlord's consent or authority of a DRO to withhold rent. After I explained to the tenants that they are not entitled to withhold rent under such circumstances the tenants provided testimony with respect to an alleged agreement with the former manager as follows. The tenants stated that they asked the former manager if they could perform work in exchange for rent but that the manger did not get back to them with an answer. The tenants acknowledged that they did not perform any work at the residential property since March 2010 and that a new manager subsequently replaced the former manager. The tenants did not mention an agreement was reached with the subsequent manager.

The landlord maintained the position that there was no agreement in place to exchange work for rent and testified the tenants last performed work for the landlord in December 2009. The landlord provided evidence that work performed by the tenants up to and including December 2009 was paid to the tenants. Upon enquiry, the landlord stated the former manager has not worked for the landlord since April 15, 2010. In making this application is seeking to recover unpaid rent and loss of rent for the months of March through July 2010 in the amount of \$3,750.00.

### Analysis

As the parties were informed during the hearing, section 26 of the Act provides that a tenant must pay rent in accordance with the terms of their tenancy agreement unless the tenant has the legal right to withhold rent. The requirement to pay rent applies even

if the landlord violates the Act, regulations or tenancy agreement. The legal right to withhold rent is provided in specific sections of the Act, and includes an agreement with the landlord to withhold rent or authority of a DRO. Where a tenant requires repairs in a rental unit and the landlord does not respond to requests for repairs a tenant may seek repair orders and authority of a DRO to reduce rent by making an application for dispute resolution.

In this case, I find the tenants did not have the right to withhold rent from a DRO or as otherwise provided under the Act. However, I have considered whether the tenants had the landlord's agreement to withhold rent as follows.

I accept that the tenants made a request to exchange work for rent to the former manager and I accept that the manager did not expressly make such an agreement with the tenants. Rather, based upon the tenants testimony I find the manager indicated he would talk to the landlord about such an arrangement. I do not find this meets the criteria of an agreement. Further, the tenants were aware that the former manager was no longer employed by the landlord and the tenants had not performed any work to offset rent payments; however, the tenants chose to continue to withhold rent. Finally, the landlord had clearly conveyed during the hearing of June 1, 2010 that the landlord was of the position there was no agreement for the tenants to withhold rent. Therefore, I find that when the tenants were served with the Notice on June 4, 2010 they were fully aware that the landlord was not agreeable to the tenants withholding rent and intended to enforce the terms of the tenancy agreement.

In light of the above, I find the tenants did not establish any basis for me set aside the Notice issued June 4, 2010 and I uphold the Notice. Accordingly, the tenancy ended June 14, 2010. Since the tenants continue to occupy the rental unit I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be enforced in The Supreme Court of British Columbia.

Upon review of the previous decision issued under file no. 753061 I find the landlord's claims for unpaid rent for the months of March and April 2010 has been heard and decided upon. While it is clear that the tenants did not pay rent for March and April 2010 the landlord's monetary claims for those months are now considered *res judicata* and the landlord may not claim unpaid rent for March and April 2010 again.

Having considered the former manager no longer worked for the landlord after April 15, 2010 and the tenants had not provided sufficient evidence that they were permitted to withhold rent for the months of May through June 2010 I uphold the terms of the tenancy agreement and find the landlord entitled to recover unpaid rent for those months. As the tenants continued to reside in the rental unit in July 2010 I further award loss of rent for July 2010 in the amount of \$750.00. I also award the filing fee to the landlord and authorize the landlord to retain the tenants' security deposit and interest in partial satisfaction of the rent owed. The landlord is provided a Monetary Order calculated as follows:

|                                     |                 |
|-------------------------------------|-----------------|
| Unpaid rent – May and June 2010     | \$ 1,500.00     |
| Loss of rent – July 2010            | 750.00          |
| Filing fee                          | 50.00           |
| Less: security deposit and interest | <u>(383.28)</u> |
| Monetary Order for landlord         | \$ 1,916.72     |

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord is authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,916.72 to serve upon the tenants.

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 28, 2010.

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Dispute Resolution Officer