



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, OLC, MNDC, OPR, MNR, FF

### Introduction

This hearing dealt with cross applications. The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent; for Orders for the landlords to comply with the Act, regulations or tenancy agreement; and for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlords applied for an Order of Possession and Monetary Order for unpaid rent and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party. Both parties confirmed service of hearing documents upon them.

### Issues(s) to be Decided

1. Should the Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Have the landlords established the tenants failed to pay rent and a loss of rent?
3. Have the tenants established an entitlement to compensation from the landlords for a missing laptop computer?
4. Is it necessary to issue Orders to the landlords for compliance with the Act, regulations or tenancy agreement?

### Background and Evidence

I was provided undisputed evidence as follows. The tenancy commenced October 4, 2010. The tenancy agreement provides that the tenants are to pay rent of \$2,200.00 on the 1<sup>st</sup> day of every month and a security deposit of \$1,100.00. On October 4, 2010 the

tenants provided the landlord a cheque written on a business account in Ontario for the amount of \$3,087.09 for pro-rated rent for October 2010 (\$1,987.09) and the security deposit. The landlord deposited the cheque on October 5, 2010 and on October 13, 2010 the cheque was returned by the landlord's financial institution with the notation "could not locate". The tenant's wife had left a voicemail for the landlords to not deposit the rent cheque on October 10, 2010. The landlord and the tenant's wife made attempts to contact each other via telephone with respect to payment of rent but payment was never received from the tenants. On October 13, 2010 the landlords posted a 24 written notice of entry. In the evening of October 14, 2010 the landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door and entered the rental unit. The Notice indicates \$3,087.09 is outstanding as of October 4, 2010 and has an effective vacancy date of October 24, 2010.

In making this application, the landlords are seeking recover of the following amounts:

Pro-rated rent for October 2010	\$ 1,987.09
Security deposit	1,100.00
Loss of rent for November 2010	2,200.00
Tenants' portion of utilities (estimated)	<u>250.00</u>
Total claim	\$ 5,537.09

The landlords confirmed that they had not provided the tenants with written demand for payment of utilities as of the date of this hearing.

The tenant acknowledged that rent had not been paid and attributed the failure to pay rent on a death in the family and paying for funeral services on or about October 10, 2010. The tenant verbally confirmed that the tenants had not reached an agreement with the landlords to pay rent later despite the tenant's written submission of such an agreement on his Application for Dispute Resolution. The tenant did not explain why

the cheque was returned for being “unable to locate” rather than insufficient funds if in fact the reason for not paying rent were other financial obligations.

The tenant claimed that upon entering the rental unit on October 14, 2010 the landlord left the door to the rental unit unlocked and a laptop went missing. The tenant is seeking compensation of \$1,000.00 for the loss of the laptop. The tenant claimed the laptop was brand new but did not provide any documentation such as a receipt or copy of the owner’s manual as evidence of the value of the laptop.

The landlords denied taking the laptop and submitted that they left the rental unit door locked on October 14, 2010.

Provided as evidence by the landlords were copies of the tenancy agreement, the returned cheque, the Notice to End Tenancy, two notarized witness statements as to the service of the 10 Day Notices and entry of the rental unit on October 14, 2010

### Analysis

Upon review of the evidence before me, I am satisfied that the landlords sufficiently served a 10 Day Notice on the approved form upon the tenants by posting it on the door on October 14, 2010. Since the Notice was posted it is deemed to be received three days later. Accordingly, the effective date on the Notice automatically changed to read October 27, 2010 in accordance with section 53 of the Act. Although a security deposit is not “rent” as defined by the Act I do not find the inclusion of the security deposit on the Notice invalidates the Notice since the tenants did owe rent as of October 4, 2010 and the tenants had not paid the rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. In this case the tenants did not pay the outstanding rent but disputed the Notice within five days. In order for the tenants to succeed in having the

Notice cancelled they must show that they did not owe rent to the landlord or the tenants had the legal right to withhold rent. In this case the tenants did not establish a basis for me to cancel the Notice. Accordingly, I uphold the Notice and find that the tenancy ended on October 27, 2010.

Since the tenants continue to occupy the rental unit, I provide the landlords 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 as an Order of that court.

I find the landlords entitled to recover the unpaid rent for October 2010 and since the tenants did not vacate the rental unit by the effective date of the Notice, I grant the landlords' request for compensation for loss of rent for November 2010. I also award the filing fee to the landlords. The landlords are provided a Monetary Order in the amount of \$4,237.09 [\$1,987.09 + 2,200.00 + 50.00] to serve upon the tenants. The Monetary Order may be enforced in Provincial Court (Small Claims).

As the landlords have yet to serve the tenants with written demand for payment of utilities I find their claim for unpaid utilities was pre-mature at the time of filing this application. Accordingly, I dismiss the landlords' claim for utilities with leave to reapply.

I do not award the security deposit to the landlords as a security deposit offsets amounts awarded to a landlord. The landlords retain the right to make a subsequent application for damage to the rental unit or additional losses if necessary.

With respect to the tenants' claim for compensation I find as follows. When a party makes a monetary claim against another party the applicant must prove that the other party violated the Act, that the violation caused the applicant to suffer a loss, and the value of the loss. While it was undisputed that the landlord entered the rental unit on October 14, 2010 and I am satisfied the entry did not comply with the requirements of

the Act the tenants failed to satisfy me that they lost a laptop as a result of the landlords' actions. Nor did the tenants provide verification of the value of the laptop. Accordingly, I dismiss the tenants' claim for compensation from the landlords.

As the parties were informed during the hearing, when a document is served by posting on the door, the document is deemed to be received three days later in accordance with section 90 of the Act. Accordingly, despite posting a Notice of Entry on October 13, 2010 the landlords were not entitled to enter the rental unit until October 17, 2010. I refer the parties to section 90 of the Act and Fact Sheet RTB-119: *How to Serve Documents* for additional information on service of documents.

Finally, the tenants request for Orders for compliance is dismissed as the tenancy has ended.

### Conclusion

The tenancy has ended and the landlords are provided an Order of Possession effective two (2) days after service upon the tenants. The landlords are provided a Monetary Order in the amount of \$4,237.09 to serve upon the tenants. The landlords' claim for unpaid utilities was pre-mature and dismissed with leave.

The tenants failed to establish a basis to cancel the Notice to End Tenancy, an entitlement to monetary compensation from the landlord or a need for Orders for compliance. Accordingly, the tenants' application has been dismissed in its entirety.

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 16, 2010.

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Dispute Resolution Officer