



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, CNR, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to dispute a Notice to End Tenancy for cause and a Notice to End Tenancy for unpaid rent. The tenant did not appear at the hearing and the landlords confirmed receipt of the tenant's application. Since the landlords appeared and were prepared to deal with the tenant's application I dismissed the tenant's application without leave to reapply.

The landlords applied for an Order of Possession and Monetary Order for unpaid rent as well as authority to retain the security deposit. The landlords subsequently amended the application to include damage or loss under the Act, regulations or tenancy agreement. The landlords testified that the initial application was served October 22, 2010 and the amended application was served via registered mail sent to each tenant at the rental unit on October 25, 2010. The landlords testified that they saw the tenants at the residential property on October 27, 2010. I was satisfied that the tenants had been served with the amended hearing documents in a manner that complies with the Act and I proceeded to hear from the landlords without the tenants present.

### Issues(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid rent?
3. Are the landlords entitled to a Monetary Order for damage or loss under the Act, regulations or tenancy agreement?
4. Are the landlords authorized to retain the security deposit?

### Background and Evidence

I was provided undisputed evidence as follows. The tenants had signed a tenancy application with the former landlord on December 4, 2009 and the tenants paid a \$300.00 security deposit. A written tenancy agreement was not signed by the parties; however, the terms identified on the tenancy application were applied. The tenants were required to pay rent of \$600.00 on the 1<sup>st</sup> day of every month. The current landlords purchased the rental unit in May 2010. The tenants failed to pay rent for the month of October 2010 and on October 2, 2010 the landlords personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) upon the female tenant. The Notice indicates that rent of \$600.00 was outstanding as of October 1, 2010 and has an effective date of October 12, 2010. The tenant did not pay the outstanding rent but disputed the Notice on October 4, 2010. In the tenant's application the tenant stated that she had withheld rent due to lack of heat from the furnace.

The landlords submitted that they had no prior knowledge of the furnace not working until they were served with the tenant's application. Upon being served the landlords employed a furnace repairman to conduct a service call. The repairman reported that the furnace was working properly but that it would not run because the oil tank had been run dry causing the pilot light to go out. The furnace line needed to be bled of air before it would start again. The landlords incurred a cost of \$56.00 for the service call. By way of the amended application the landlords are seeking recovery of this cost from the tenants as the tenants let the oil tank run dry.

The landlords are also seeking to recover loss of rent for November 2010 since the tenant disputed the Notices to End Tenancy and did not vacate the rental unit by the effective date on the 10 Day Notice.

Included in the landlords' evidence package is a copy of the tenancy application, the Notice, proof of service of the Notice, the furnace repair invoice, and registered mail receipts for this hearing.

### Analysis

Where 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 tenant disputed the Notice but the tenant's request to cancel the Notice has been dismissed. Therefore, I find the tenancy ended on the effective date of October 12, 2010 and the landlords are entitled to 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 am satisfied that the landlords are entitled to recover unpaid rent of \$600.00 from the tenants for the month of October 2010. I further award the landlords loss of rent for the month of November as the tenants disputed the Notice and continued to reside in the rental unit precluding the landlord from re-renting the unit for November 1, 2010.

With respect to the furnace repair, upon reading the repairman's written record, I am satisfied the furnace required a service call due to the tank being run dry. I find this was the tenants' responsibility to ensure the tank did not run dry and I hold the tenants responsible for the service call.

As the landlords were successful in this application I award the filing fee to the landlords. As the landlords have established an entitlement to compensation from the tenants, I authorize the landlords to retain the tenants' security deposit and I provide the landlords with a Monetary Order calculated as follows:

Unpaid rent – October 2010	\$ 600.00
Loss of rent – November 2010	600.00
Furnace repair	56.00
Filing fee	50.00
Less: security deposit	<u>( 300.00)</u>
Monetary Order	<u>\$ 1,006.00</u>

The landlords 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 tenant's application was dismissed without leave. The landlords have been provided an Order of Possession effective two (2) days after service upon the tenants. The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$1,006.00.

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 04, 2010.

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Dispute Resolution Officer