



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MND, MNR, MNSD, MNDC, FF  
Tenant: CNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord, her witness and two of the tenants. The female tenant participated in the hearing from the start and the male tenant joined the hearing approximately 25 minutes after the start of the hearing.

The male tenant called into the hearing from his workplace, a construction site and as such he was difficult to hear. I asked that he go someplace where the background noise would not disturb the hearing and he stated that he was working while on this call and that I had to listen to him.

I was in the process of hearing from a witness when the male tenant joined the call and I advised him that we would hear from the witness then I would ask for the male tenant's testimony. The male tenant became belligerent, refused to listen and ascribe to any acceptable standard of conduct. I told the male tenant that he could follow this process or he could leave the call immediately. The male tenant left the call.

I also note that the female tenant testified that they were going to move anyway and that she was just waiting for this hearing. As the tenant confirmed that they were moving, she agreed that she no longer needed to dispute the notice to end tenancy and withdrew her Application.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for compensation for painting and carpet cleaning; for all or part of the security deposit and to recover the filing fee from

the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on May 14, 2011 for a 1 year fixed term tenancy beginning on June 1, 2011 for the monthly rent of \$1,600.00 due on the 1<sup>st</sup> of each month and a security deposit of \$800.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 2, 2011 with an effective vacancy date of August 12, 2011 due to \$1,600.00 in unpaid rent.

Documentary evidence and testimony filed by the landlord indicates the tenants failed to pay the full rent owed for the months of August and September 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on August 2, 2011 at 7:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord testified the tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The female tenant asserts the landlord banged on their door on August 1, 2011 in the afternoon wanting the rent but they did not answer the door because the police told them to have no contact with the landlord. She goes on to say that after 7:00 p.m. that night her and the male tenant went up to the landlord's unit and paid the landlord the full rent in cash.

The tenant goes on to say that landlord told them that her receipt book was in her car and that she would get them a receipt later but that they never did receive a receipt. The landlord testified that she doesn't use a receipt book but rather she writes receipts on loose paper so she would never have told the tenants this.

The landlord's witness stated that she spoke to the tenant and that the tenant told her that she had no intention of paying rent because the landlord had the security deposit and she could use that towards rent. The tenant states that she told the witness the landlord did not give her a receipt for rent only.

The landlord also seeks compensation for painting and carpet cleaning resulting from the tenants' smoking in the house.

### Analysis

As the tenants have withdrawn their Application for Dispute Resolution to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on August 2, 2011, I find the tenants have accepted the end of the tenancy as per that notice and are required to vacate the property as soon as possible.

In relation to the amount of rent owed to the landlord, despite the tenants' assertions that the landlord and all of her witnesses were lying, the tenants failed to provide any substantive prove that they paid the rent for August, 2011. The female tenant acknowledged that they did not pay rent for September 2011, because they planned to move.

Although the tenancy was relatively new, the tenants had on previous months paid the rent partly by money order and partly in cash. Neither party provided copies of receipts for those months nor does either party dispute there were portions of the rent paid in cash.

In the absence of any evidence to corroborate the tenants' testimony and in light of testimony from the landlord's witness, I find, on the balance of probabilities, the tenants did not pay rent for the month of August 2011.

As the tenants still have possession of the rental unit, I find it is premature for the landlord to seek compensation for damage to the rental unit as the tenants have the opportunity to repair any damage and complete any cleaning prior to the end of the tenancy. I therefore dismiss this portion of the landlord's application with leave to reapply.

### Conclusion

I find the landlord is entitled to 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 landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,250.00** comprised of \$3,200.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$800.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,450.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) 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: September 09, 2011.

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Residential Tenancy Branch