



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: CNR; MNDC; FF

Landlords' application: OPR; MNR; MND; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* issued July 25, 2012 (the "Notice"); compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The Landlords seek an Order of Possession; a Monetary Order for unpaid rent and damages to the rental property; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that she mailed the Notice of Hearing documents, by registered mail, to the female Tenant at the rental unit on August 3, 2012. The Tenant provided the tracking number for the registered documents.

The Notice of Hearing documents must be served to each Respondent. I find that the Landlords did not serve the male Tenant with the Notice of Hearing documents and therefore their application against him is dismissed without leave to reapply. Co-tenants are jointly and severally responsible for debts and damages incurred over a tenancy and the Landlord chose to continue against the female Tenant only. I am satisfied that the Landlord served the female Tenant with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effective 5 days after mailing the documents.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Tenant did not sign into the teleconference and therefore I find that she has abandoned her Application. **The Tenant's application is therefore dismissed without leave to reapply.**

Despite being served with the Notice of Hearing documents, the female Tenant did not sign into the teleconference and the Landlord's application was heard in her absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary award for unpaid rent and damages to the rental unit?

### **Background and Evidence**

The Landlord provided the following testimony:

This tenancy began on May 1, 2010. Monthly rent is \$1,000.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$500.00.

The Tenants only paid \$400.00 rent for July, 2012 and have not paid any rent for the month of August, 2012. The Landlord stated that the Tenants have caused damage to the rental unit and the Landlord seeks \$3,400.00 for the cost of repairing the rental unit. The Landlord testified that she is not certain what the extent of the damage will be, but that the Tenants have damaged doors, walls and the carpet.

The Landlord served the Tenant with the Notice by posting it to her door on July 25, 2012.

The Landlord asked for an Order of Possession because the Tenants are still living in the rental unit and has not paid any of the outstanding rent.

The Landlord asked to apply the security deposit towards her monetary award.

### **Analysis**

Section 55 of the Act states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of

possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

The Tenant's application to cancel the Notice has been dismissed and therefore, pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession.

I find that the Notice was served on July 28, 2012, pursuant to the provisions of Section 90 of the Act. Therefore, I find that the tenancy ended on August 7, 2012. The Tenants are overholding and I find that the Landlord is entitled to an **Order of Possession effective 2 days after service of the Order upon the female Tenant.**

I accept the Landlord's undisputed testimony that the Tenant owes **\$1,600.00** in unpaid rent for July and August, 2012. With respect to the Landlords' application for damages, I find that this portion of the Landlord's application is premature. The Landlords have not assessed any damage that may have occurred and therefore this portion of their application is **dismissed with leave to reapply.**

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the female Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlords a Monetary Order against the female Tenant, calculated as follows:

Unpaid rent	\$1,600.00
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,650.00
Less security deposit	<u>-\$500.00</u>
Balance due to the Landlords	\$1,150.00

### **Conclusion**

The Tenant's application is **dismissed in its entirety without leave to reapply.**

The Landlords' application for a monetary award for damages is **dismissed with leave to reapply**.

The Landlords' application against the male Tenant for an Order of Possession and a monetary award for unpaid rent is **dismissed without leave to reapply**.

I hereby provide the Landlords an Order of Possession **effective 2 days after service of the Order upon the female Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords a Monetary Order against the female Tenant in the amount of **\$1,150.00**. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and 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: August 28, 2012.

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Residential Tenancy Branch