



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNDC, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

On October 15, 2012 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Unpaid Rent; to dispute an additional rent increase; to recover costs of emergency repairs; for the return of the security deposit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for an Order requiring the Landlord to make emergency repairs.

The male Tenant stated that the Application for Dispute Resolution was served to the Landlord's father on October 15, 2012 when he was attempting to repair something in the rental unit and that the father threw the papers on the floor. He stated that the rent in September was paid to the father. The female Tenant stated that she was present when the father refused to take the papers and that he informed them that they should discuss any concerns about their tenancy with his son.

The Landlord stated that his father is not the Landlord or his agent; that the father has never collected the rent; that his father was attempting to repair something in the rental unit in October of 2012; and that his father told him that the Tenants had attempted to give him some papers and that he had informed them the documents should be delivered to the Landlord. The Landlord stated that the Tenant have not served him with the Tenants' Application for Dispute Resolution.

In the absence of evidence that corroborates the male Tenant's testimony that rent has been paid to the Landlord's father or that refutes the Landlord's statement that his father has not represented him in this tenancy, with the exception of attempting to make repairs to the rental unit, I find that the Tenants have failed to establish that the Landlord's father is an agent for the Landlord. I therefore find that the Tenants have not properly served the Landlord with the Tenants' Application for Dispute Resolution and I dismiss that Application for Dispute Resolution, with leave to reapply.

On October 24, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for unpaid rent; a monetary Order for money owed or compensation for damage or loss; a monetary Order for unpaid rent; to

keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. Each Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution.

The Landlord applied to amend the spelling of the male Tenant's first name, as provided by the male Tenant at the hearing, and the Application for Dispute Resolution has been amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch. He stated that these documents were posted on the door of the rental unit on November 08, 2012. The female Tenant stated that these documents were not received. As the Tenants did not acknowledge receipt of the Landlord's evidence, it was not accepted as evidence for these proceedings. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the female Tenant's testimony that the documents were not received and the possibility that the documents fell off the door or were removed by a third party. The Landlord did not request an adjournment for the purposes of re-serving these documents.

The female Tenant stated that no evidence was served to the Landlord in regards to this matter.

#### Issue(s) to be Decided

Should the Landlord be granted an Order of Possession for unpaid rent; is the Landlord entitled to a monetary Order for unpaid rent/lost revenue; is the Landlord entitled to retain the security deposit; and is the Landlord entitled to recover the fee for the filing this Application for Dispute Resolution?

#### Background and Evidence

The Landlord and the Tenants agree that this tenancy began prior to the Landlord purchasing the rental unit on August 15, 2012. The male Tenant stated that the tenancy agreement with the previous owner required rent of \$800.00 to be paid by the first day of each month. The Landlord did not dispute this testimony.

The male Tenant stated that they paid a security deposit of \$400.00 at the start of the tenancy. The Landlord and the Tenants agree that the former owner denies receiving a security deposit at the start of the tenancy. The Landlord stated that the former owner did not transfer a security deposit to him. The Tenants submitted no evidence to show that a security deposit of \$400.00 was paid.

The Landlord and the Tenants agree that the Tenant paid a security deposit of \$500.00 on August 15, 2012.

The male Tenant stated that neither the Tenants nor the former owner ended their tenancy agreement. The Landlord acknowledged that he did not direct the previous owner to serve the Tenants with a Notice to End Tenancy.

The Landlord stated that sometime in July he met with both Tenants and the previous owner, at which time the Tenants agreed to pay monthly rent of \$1,000.00. Both Tenants stated that the Landlord clearly indicated he wanted them to pay monthly rent of \$1,000.00 but that they did not agree to the increased rent. The Landlord and the Tenants agree that the Tenants refused to sign a new tenancy agreement with the Landlord that required them to pay rent of \$1,000.00.

The Landlord applied for compensation of \$200.00 in unpaid rent from September, \$1,000.00 in unpaid rent from October, and \$1,000.00 in unpaid rent from November. The Landlord and the Tenant agree that the Tenant paid \$800.00 in rent for September and that no rent has been paid for October or November of 2012.

The Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which was dated October 02, 2012, on the door of the rental unit on October 02, 2012. The male Tenant acknowledged receipt of the Notice, although he cannot recall if it was located on October 01, 2012 or October 02, 2012. The parties agree that the effective date of the Notice was October 15, 2012.

### Analysis

On the basis of the undisputed evidence, I find that the Tenants and the former owner had a tenancy agreement for this rental unit that required the Tenants to pay monthly rent of \$800.00 by the first day of each month and that this tenancy agreement has not ended. I therefore find that the rights and obligations of this tenancy agreement were transferred to the Landlord when he purchased the rental unit on August 15, 2012.

I find that the Landlord has submitted insufficient evidence that the Tenants agreed to pay monthly rent of \$1,000.00. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant agreed to pay monthly rent of \$1,000.00 or that refutes the testimony of both Tenants that they did not agree to pay monthly rent of \$1,000.00. I note that even if I had evidence from the former owner regarding this agreement, I would find there is insufficient evidence to conclude that the parties had reached an agreement. In determining this matter I was heavily influenced by the evidence that the Tenants refused to sign a tenancy agreement which requires them to pay \$1,000.00, which causes me to conclude they did not agree to pay the new amount.

I find that the Tenants paid a security deposit of \$500.00 on August 15, 2012. I find that the Tenants submitted insufficient evidence to establish that they also paid a \$400.00

security deposit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that one was paid or that refutes the former owner's position that it was not paid.

As the Landlord has failed to establish that he entered into a verbal tenancy agreement with the Tenants that requires them to pay monthly rent of \$1,000.00, I find that the Tenants remain obligated to pay monthly rent of \$800.00.

On the basis of the undisputed evidence, I find that the Tenants paid all of the rent that was due for September and none of the rent that was due for October. I therefore find that the Tenants owe \$800.00 in rent to the Landlord for October.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. On the basis of the date on the Notice to End Tenancy and the testimony of the Landlord, I find that the Landlord posted a Ten Day Notice to End Tenancy on the door of the rental unit on October 02, 2012. As the male Tenant stated that they received the Notice on either October 01, 2012 or October 02, 2012, I find that it was received by the Tenants by October 02, 2012. As the Tenants did not pay all of the rent that was due since being served with the Notice to End Tenancy and the Tenants did not establish a right to withhold all of the rent due on October 01, 2012, I find that the Landlord is entitled to an Order of Possession.

As the Tenants did not vacate the rental unit on the effective date of the Notice, which was October 15, 2012, I find that they are obligated to pay rent, on a per diem basis, for the days they remain in possession of the rental unit. As they have already been ordered to pay rent for the period between October 16, 2012 and October 31, 2012, I find that the Landlord has been fully compensated for that period. I also find that the Tenants must compensate the Landlord for the 19 days in November that they remained in possession of the rental unit, at a daily rate of \$26.67, which equates to \$506.73.

I find that the Tenants fundamentally breached the tenancy agreement when they did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the *Act* when they did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of November. I therefore find that the Tenants must compensate the Landlord for the unpaid rent/lost revenue for the remainder of November, which is \$293.27.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,650.00, which is comprised on \$1,600.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$500.00 in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,150.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court 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: November 19, 2012.

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Residential Tenancy Branch