



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNDC FF

### Preliminary Issues

Upon review of the Landlord's original application and the amendment filed on October 4, 2013, the Landlord advised that he wished to withdraw the amended claim for damages, with leave to reapply.

The Landlord stated he understood he could not request payment of a security deposit now that the tenancy will end so he was withdrawing that request as well. He advised that he wished to proceed with the remaining items on his original application that relate to the Order of Possession and monetary order for unpaid rent including October 2013.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on September 10, 2013 seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed September 9, 2013, seeking an Order to cancel a Notice to end tenancy for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on September 10, 2013, and again on October 4, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find each Tenant is deemed served notice of this proceeding on September 15, 2013, five days after it was mailed, in accordance with section 90 of the Act.

No one appeared at the teleconference hearing on behalf of the Tenants, despite this hearing being convened to hear matters pertaining to their own application. Therefore, as the Tenants had their own application scheduled for this time and knew about this hearing, I proceeded in the Tenants' absence.

#### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

#### Background and Evidence

The Landlord provided affirmed testimony that he entered into a written tenancy agreement with the Tenants on August 21, 2013. Rent was to be paid on the second last day of each month in the amount of \$1,400.00 and the Tenants were required to pay \$1,000.00 as a security deposit. The Tenants were given possession of the rental property as of August 25, 2013 after they provided the Landlord with a cheque for \$1,000.00 as payment for the security deposit.

The Landlord stated that the security deposit cheque was returned NSF. He indicated that when the Tenants failed to pay rent on August 30, 2013, he issued a 10 Day Notice and posted it to their door on August 31, 2013, in the presence of a witness.

The Landlord testified that he attended the unit on September 30, 2013, and found that the Tenants have vacated leaving only a sofa, a television and a few toys in the unit. He assumed the Tenants had abandoned the unit so he returned on October 2, 2013 to change the locks. While he was there, the female Tenant arrived, swore at him, and told him to get out of her house. The RCMP attended that day and when they arrived they told the Landlord he had to wait until the hearing before he could regain possession of the unit. When he was leaving the Tenant told him he was going to pay for this.

Then on the evening of October 2, 2013, the neighbours called the RCMP because of loud noises coming from the house. When the police arrived they found the interior of the house had been vandalized, as supported by the photos provided in the Landlord's evidence. The Landlord is seeking immediate possession and a monetary order for the unpaid rent.

There was no evidence submitted in support of the Tenants' application, as no one attended the hearing on behalf of either Tenant.

## Analysis

### **Tenants' Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator 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.

Accordingly, in the absence of any submissions from the applicant Tenants I order the application dismissed without liberty to reapply.

### **Landlord's Application**

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants made application to dispute the Notice; however, they did not appear at the scheduled hearing to provide evidence to support their request to have the notice cancelled. Furthermore, I accept the undisputed evidence provided by the Landlord which indicates the Tenants failed to pay the full rent within five days.

The Tenants received the 10 Day Notice and disputed it on September 9, 2013. The effective date of the Notice is **September 13, 2013**, in accordance with section 90 of the Act. The evidence supports The Tenants did not pay the rent, and their request to cancel the Notice was dismissed above. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice

and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*.

There is overwhelming evidence that the property has been vandalized on the evening of October 2, 2013. Accordingly, I approve the Landlord's request for an immediate Order of Possession. I HEREBY ORDER the Landlord to serve each Tenant with a copy of the Order of Possession by posting a copy of the Order to the front door of the rental property, in accordance with section 89(2) of the *Act*.

Section 26 of the *Act* stipulates that a tenant must be rent in accordance with the tenancy agreement.

The Landlord claimed unpaid rent of \$1,400.00 which was due August 30, 2013 for the month of September. The Tenants failed to pay rent in accordance with the tenancy agreement which I find is a breach of section 26 of the *Act*. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,400.00**.

As noted above this tenancy ended **September 13, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for October 2013, and not rent. The RCMP were involved as the Tenants refused to give up possession of the unit until this hearing on October 18, 2013. The evening of October 2, 2013, the property was vandalized while the Tenants still had lawful possession. As a result the Landlord will not be able to re-rent the unit right away. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of October 2013, in the amount of **\$1,400.00**.

The Landlord has withdrawn his amended claim for damages and future loss of rent requesting leave to reapply. I have not heard testimony in respect to damages or future loss of rent; therefore, I grant the Landlord leave to reapply for any additional losses suffered as a result of this tenancy.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **immediately**. The Landlord has been instructed to serve this Order by posting a copy of it to the door of the rental unit.

The Landlord has been awarded a Monetary Order in the amount of **\$2,900.00** (\$1,400.00 + \$1,400.00 + \$100.00). This Order is legally binding and must be served upon each Tenant in accordance with Section 89 (1) of the Act. (Not by posting it on the rental unit door). In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I HEREBY DISMISS The Tenants' application, without leave to reapply.

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: October 18, 2013

---

Residential Tenancy Branch

