



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, MNDC, FF  
Tenants: CNR, MNDC, OLC, RP

### 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; an order to have the landlord make repairs; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; his agent; both tenants and their interpreter.

### 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; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order; and for an order to have the landlord make repairs, pursuant to Sections 32, 46, 67, and 72 of the *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 April 11, 2013 for a 1 year fixed term tenancy beginning on May 1, 2013 for the monthly rent of \$1,700.00 due on the 1<sup>st</sup> of each month and a security deposit of \$850.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 2, 2013 with an effective vacancy date of August 2, 2013 due to \$2,050.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of July and August 2013 and that the tenants were served the

10 Day Notice to End Tenancy for Unpaid Rent personally on August 2, 2013 at 9:30 a.m. and that this service was witnessed by a third party. The tenants agree that they received the 10 Day Notice on August 2, 2013.

The tenants submit that they were uncertain how much the rent was because the landlord keeps changing the amounts. The tenants provided a copy of a form completed for the Ministry of Social Development and Social Innovation indicating rent was \$1,600.00; another document dated July 8, 2013 stating that rent was \$1,750.00.

The landlord had provided a copy of a tenancy agreement as noted above outlining rent in the amount of \$1,700.00. In her testimony the female tenant confirmed that she signed the tenancy agreement on April 11, 2013 and that it included the amount of \$1,700.00.

The parties agree that on the date that the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent there was rent owing, but the parties cannot agree on the amount.

The landlord submits that on the date that the Notice was issued the tenants owed \$350.00 for the month of July 2013 and \$1,700.00 for the month of August 2013. The landlord acknowledges receiving \$1,000.00 from the tenants "about a week ago". The landlord submits that the current arrears total \$2,750.00.

The landlord submitted into evidence an accounting of the total amount owing as of August 1, 2013 being \$2,050.00. This handwritten account was initialled by the landlord and the female tenant. The female tenant states she signed the document only out of fear that she would lose the rental accommodation. She states that she disagrees with this amount.

The tenants submit that they believe that as of August 2, 2013, when the Notice was issued, they owed the landlord \$1,300.00. The tenants submit that they provided the landlord with \$1,000.00 on August 28, 2013 for September, leaving a balance owing the landlord of \$2,000.00 as of the date of this hearing.

The tenant submits that she provided the landlord with an additional payment of \$700.00 in May 2013 that was not accounted for in the landlord's calculations. The tenant submits that the landlord does not always issue rent receipts. The landlord testified that he does issue receipts but they did not provide them into evidence.

The tenants seek, if the tenancy is to continue, repairs to the toilet. The landlord submits that the tenants did request a repair; that he purchased the replacement part; and the male tenant stated that he would install it. The tenants submit there must have been another miscommunication between the parties on this matter.

### Analysis

I have reviewed all the evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice was received by the tenants on August 2, 2013 and the effective date of the notice is amended to August 12, 2013, pursuant to Section 53 of the *Act*.

While I recognize there was a dispute as to the amount of rent that was owed to the landlords the tenants acknowledge that rent was owed when they received the notice. I note the tenants, while acknowledging they owed the landlord some money made no attempt to pay any amounts to the landlord until August 28, 2013.

I further note that the tenants referred to the August 28, 2013 payment as towards September 2013 rent and that they will pay the landlord the arrears on September 20, 2013.

As the tenants have failed to make any such payment or provide any allowable reasons under the *Act* to withhold rent, I find the landlord is entitled to end the tenancy in accordance with the 10 Day Notice to End Tenancy issued on August 2, 2013.

As to the amount owing to the landlord, as the burden rests with the landlord to provide sufficient evidence to establish the amount owed and the tenant disputes all but \$700.00 of the amount claimed by the landlord, I accept the landlord has established an amount of \$2,050.00.

As the landlord's documentation consisted of notes made to calculate the amount owed and does not include any actual documents confirming receipt of any funds or an actual ongoing tenant account ledger I find the landlord has failed to establish the amount should include the \$700.00 the tenant disputes.

As I have determined the tenancy must end in accordance with the 10 Day Notice, I find no need to make any rulings on any of the other matters raised in the tenants' Application and I dismiss those matters.

### 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 and grant a monetary order in the amount of **\$2,100.00** comprised of \$2,050.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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 10, 2013

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Residential Tenancy Branch

