



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that they received a copy of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on their door by the landlord on August 2, 2013. Both tenants also confirmed that they had received separate copies of the landlord's dispute resolution hearing package handed to the male tenant and sent to the female tenant by registered mail on September 6, 2013. I am satisfied that the landlord served the above notices to the tenants in accordance with the *Act*.

At the hearing, both parties confirmed that they had received written evidence from one another. However, the landlord did not supply any written evidence to the Residential Tenancy Branch (the RTB), including a copy of his 10 Day Notice. He said that he had meant to do so, but overlooked this step. The female tenant (the tenant) testified that the tenants did not include these documents in their written evidence because they believed that this evidence had already been supplied to the RTB. These documents included an August 6, 2013 letter from the lawyer for the bank that holds the mortgage on this rental property to the tenants,

As the tenants were relying on written evidence that they understood had already been submitted into written evidence by the landlord, I advised both parties that I would

consider copies of this written evidence and a copy of the landlord's 10 Day Notice faxed to the RTB by 4:00 p.m. on the day of the hearing. The landlord said that he would submit this written evidence by fax in accordance with this direction. As the tenants already had copies of this written evidence, had little access to a fax machine and relied heavily on the August 6, 2013 letter they read into the record at the teleconference hearing, they said they would not likely be submitting any further written evidence by fax for my consideration. Before 2:00 p.m. on the day of the hearing, the RTB received a fax from the landlord containing copies of the written evidence he had provided to the tenants and the first page of his 10 Day Notice. As noted at the hearing, I have taken this additional information, already provided to the tenants, in my consideration of the landlord's application.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for monies owed and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

This one-year fixed term tenancy for a rental condominium commenced on August 15, 2012. Monthly rent is set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$550.00 security deposit paid on July 30, 2012.

The parties agreed that the landlord's 10 Day Notice identified \$1,100.00 as owing as of August 1, 2013. As the tenants did not apply to cancel the 10 Day Notice nor did they pay their rent in full within five days of receiving the 10 Day Notice, the landlord requested an Order of Possession. The landlord's original application for a monetary award of \$2,200.00 was for unpaid rent owing for August and September 2013. At the hearing, the landlord asked for permission to increase the amount of his requested monetary award to \$3,300.00, to reflect the tenants' failure to pay their rent for October 2013. I agreed to revise the amount of the landlord's requested monetary award to \$3,300.00 as requested.

The tenants provided sworn testimony and some written evidence regarding their claim that officials of the bank holding the landlord's mortgage have contacted them a number of times to advise them that the landlord is no longer the owner of this property. They maintained that the bank's officials including a lawyer representing the bank advised them that they were to pay their monthly rent to the bank and not to the landlord. After

receiving the 10 Day Notice, they were sent an August 6, 2013 letter by email (subsequently followed by a mailed copy) by the bank's lawyer advising them that the landlord's mortgage was in default. The lawyer advised them that all future payments of rent were to be made to the bank "unless directed otherwise in writing by us or Court Order." The lawyer's letter also advised that "Unless you pay your rent as directed, you may be liable to pay it twice." The tenants' written evidence included copies of:

- a June 28, 2013 Affidavit filed in the Supreme Court of B.C. on behalf of the bank's mortgage company;
- a June 28, 2013 Petition to the Court by the bank's mortgage company; and
- a title search regarding the ownership and mortgage placed on this property.

After receiving the letter from the bank's lawyer, the tenants were uncertain whether their rent should be paid to the landlord or the bank. They testified that they have not made any rent payments for August, September or October 2013, pending the outcome of this hearing.

#### Analysis – Application for an Order of Possession

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* reads in part as follows:

- 52     *In order to be effective, a notice to end tenancy must be in writing and must...*
- (a) be signed and dated by the landlord or tenant giving the notice,*
  - (b) give the address of the rental unit,*
  - (c) state the effective date of the notice,*
  - (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
  - (e) when given by a landlord, be in the approved form.*

Although I gave the landlord an additional opportunity to submit a full copy of his 10 Day Notice to demonstrate that he had complied with the provisions of sections 46(2) and 52 of the *Act*, he submitted only one of the two pages of his 10 Day Notice. At the bottom of this Notice, the form specifically states that "This is page 1 of a 2-page Notice." The second page of the 10 Day Notice provides information to the recipient(s) of that Notice

to advise them of the steps they can take to dispute the Notice or to comply with that Notice. The first page of the 10 Day Notice also states that “the landlord...must give the tenant pages 1 & 2.” If I were satisfied that the tenants had received both pages of this 10 Day Notice, their failure to take action within 5 days might have enabled the landlord to obtain an Order of Possession on the basis of his 10 Day Notice. However, despite having been afforded two opportunities to provide copies of the complete 10 Day Notice, the landlord did not do so.

Under these circumstances, I am not satisfied that the landlord has demonstrated that he has complied with the requirements of section 52(e) of the *Act* as he has only provided one of the two pages of his 10 Day Notice issued to the tenants. Both pages are necessary in order to demonstrate compliance with section 52(e) of the *Act*. For these reasons, I dismiss the landlord’s application to obtain an Order of Possession based on the 10 Day Notice without leave to reapply. The 10 Day Notice is of no force or effect. If rent remains owing and is due to the landlord, the landlord remains at liberty to issue a new 10 Day Notice to the tenants.

#### Analysis – Application for a Monetary Order

There is undisputed evidence that the tenants have not paid anything towards this tenancy for August, September or October 2013. Although the tenants have submitted documents that demonstrate that the bank holding the landlord’s mortgage has petitioned the Supreme Court of B.C. to take possession of this property, the tenants have not provided any decision or Order of the Supreme Court of B.C. confirming that the property is now owned by anyone other than the landlord.

I can understand why the letter received by the tenants from the bank’s lawyer would make the tenants nervous about the prospect of having to pay their rent twice. However, they have not paid rent to anyone for three months and did not apply to cancel the landlord’s 10 Day Notice. They did not enter into written evidence any Order from the Supreme Court in which the Court has determined who should be assigned rents from this tenancy. They did not ensure that someone from the bank or the bank’s lawyer attend the hearing to support their assertion that the landlord is no longer the owner of this property. Instead, the tenants have remained in the rental unit and chosen to not pay anyone their monthly rent.

The tenants have not provided evidence that anyone other than the landlord has a legal claim to the tenants’ rent over this period. As such and based on the evidence before me, I find that the tenants are bound by the original terms of their Residential Tenancy Agreement, in which monthly rent became due on the first of each month payable in advance to the landlord named in that Agreement. Under these circumstances, I find

that the landlord has demonstrated his entitlement to a monetary Order of \$3,300.00, the amount owing for August, September and October 2013.

Until such time as the tenants have been provided with written evidence from the Court(s) or from the landlord that someone other than the landlord is to receive monthly rent for this property, the tenants are required to pay their monthly rent to the landlord as set out in their original Residential Tenancy Agreement.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. As the landlord has been partially successful in this application, I also allow the landlord to recover his filing fee from the tenants.

#### Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice. The landlord's 10 Day Notice is of no force or effect. This tenancy continues.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee, and to retain the tenants' security deposit:

Item	Amount
Unpaid August 2013 Rent	\$1,100.00
Unpaid September 2013 Rent	1,100.00
Unpaid October 2013 Rent	1,100.00
Less Security Deposit	-550.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,800.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 22, 2013

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Residential Tenancy Branch

