



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0794965 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF, CNR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear applications from both the landlord and the tenants. The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and 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 the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

### Tenants' Application

While the landlord attended the hearing by way of conference call, the tenants did not, although I waited until 9:43 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution

proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without liberty to reapply.**

Preliminary Issue - Landlord's Service of Documents

The landlord testified that he handed both tenants the 10 Day Notice on January 16, 2014. I am satisfied that the tenants were served with the 10 Day Notice in accordance with the *Act*.

The landlord gave sworn testimony that he attempted a number of times to deliver copies of the landlord's dispute resolution hearing to the tenants. He testified that he handed Tenant SW (the female tenant) copies of the landlord's dispute resolution hearing package. He said that the female tenant told him that she would forward one of these packages to Tenant BED (the male tenant).

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

Section 89(2) of the *Act* outlines the methods whereby an application for an order of possession can be served to a tenant.

*(2) An application by a landlord under section 55 [order of possession for the landlord],... must be given to the tenant in one of the following ways:*

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*

*(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*

*(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;...*

I am satisfied that the landlord has served a copy of his dispute resolution hearing package to the female tenant in accordance with sections 89(1) and (2) of the *Act*.

At the hearing, I advised the landlord of my finding that he has not served the male tenant in a manner required by section 89(1) of the *Act*. For this reason, I cannot consider the landlord's application for a monetary Order against the male tenant. I dismiss the landlord's application for a monetary Order against the male tenant with leave to reapply.

I find that the landlord has served the male tenant with notice of his application for an Order of Possession in accordance with section 89(2)(c) of the *Act*, so I can proceed with that portion of the landlord's application for dispute resolution naming the male tenant as a Respondent.

#### 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 unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This one-year fixed term tenancy commenced on December 10, 2013. Monthly rent is set at \$1,300.00, payable in advance on the 15<sup>th</sup> of each month, plus utilities. The landlord continues to hold the tenants' \$650.00 security deposit paid on December 9, 2013.

The landlord issued the 10 Day Notice when the tenants failed to pay rent that became due on January 15, 2014. The landlord gave undisputed sworn testimony that the tenants have not paid anything further to the landlord since the 10 Day Notice was issued to them.

### Analysis

The tenants failed to pay the \$1,300.00 identified as owing in the 10 Day Notice in full within five days of receiving that Notice. Although the tenants applied to cancel the 10 Day Notice within five days of receiving the 10 Day Notice, they presented no written evidence or oral testimony to support their claim that they had some type of agreement with the landlord whereby rent would be exchanged for work performed. On the basis of the undisputed sworn testimony of the landlord, I find that this tenancy should have ended on the effective date of the 10 Day Notice. In this case, this required the tenants to vacate the premises by January 26, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

On the basis of the landlord's undisputed sworn testimony and written evidence, I find that the landlord is entitled to a monetary award of \$1,300.00 for rent that became owing on January 15, 2014, and a further \$1,300.00 for rent owing as of February 15, 2014.

I have also considered the landlord's request for an additional monetary award of \$1,300.00 for anticipated loss of rent that becomes due on March 15, 2014. I find that the landlord may be able to rent the premises by April 1, 2014. As such, I issue a monetary award for loss of rent in the amount of \$712.90 ( $\$1,300.00 \times 17/31 = \$712.90$ ), an amount which entitles the landlord to recover loss of rent from March 15 until March 31, 2014, representing 17/31 of the rent for the next rental period.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. I also allow the landlord to recover the \$50.00 filing fee from the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour against the female tenant (Tenant SW) under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid Rent due as of January 15, 2014	\$1,300.00
Unpaid Rent due as of February 15, 2014	1,300.00
Loss of Rent March 15-March 31, 2014	712.90
Less Security Deposit	-650.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,712.90</b>

The landlord is provided with these Orders in the above terms and the female tenant (Tenant SW) must be served with this Order as soon as possible. Should the female tenant 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.

The landlord's application for dispute resolution for a monetary award against the male tenant (Tenant BED) is dismissed with leave to reapply.

The tenants' application is dismissed 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: March 06, 2014

---

Residential Tenancy Branch

