



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR

### Introduction

This was the hearing of applications by the tenants and by the landlord. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent and they requested payment of a monetary order, although they did not pursue a claim for a monetary order at the hearing. The landlord applied for an order for possession and a monetary order for unpaid rent. The applications were heard together and the hearing was conducted by conference call. The named tenant attended with her legal advocate. The landlord and her husband called in and participated in the hearing they were assisted by the named representative.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the landlord entitled to an order for possession

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

### Background and Evidence

The rental unit is an apartment in Penticton. The tenancy began May 1, 2012. The monthly rent is \$850.00 and the tenants paid a security deposit of \$425.00 at the start of the tenancy.

The landlord testified that the tenants have paid rent in cash. In February 2014 the tenant were short in the rent payment by \$38.00. In March the tenants made two rent payments, the first in the amount of \$390.00, the second in the amount of \$300.00. The landlord testified that no rent has been paid for the month of April. The landlord acknowledged that the tenants have not been given receipts for the cash payments of rent. The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent dated April 2, 2014. The Notice to End Tenancy stated that the tenants failed to pay rent of \$192.00 that was due on March 1, 2014. According to the landlord the amount in the Notice to End Tenancy was incorrect; it should have been \$198.00, not \$192.00. The landlord said that no rent has been paid for April, leaving an amount due of \$1,048.00. The landlord also served the tenants with a one month Notice to End Tenancy for cause dated March 31, 2014 requiring the tenants to move out by April 30,

2014. The ground for the notice was that the tenants have been repeatedly late paying rent.

The tenant testified that she paid all the February rent in full on February 1<sup>st</sup>. She denied that there was any shortfall in the February rent payment. She testified that she paid the landlord \$495.00 on March 1<sup>st</sup>, but the landlord did not give her a receipt. The tenant said she paid the landlord \$700.00 on April 1, 2012. According to the tenant there is \$505.00 owing for rent consisting of \$355.00 owing for March and \$150.00 outstanding for April.

At the hearing the landlord, through the landlord's representative, requested that an order for possession be granted effective April 30, 2014. The landlord's representative said that the landlord was not interested in pursuing a monetary claim against the tenants, but was prepared to retain the tenant's security deposit of \$425.00 in full and final satisfaction of all claims for outstanding rent and would forego any additional monetary claim.

The tenants disputed the landlord's evidence as to the outstanding rent, but acknowledged that there is \$505.00 owed for rent up to the end of April. The tenant's advocate submitted that the landlord had agreed to wait for the balance of April rent until the tenant received a pension payment. The tenants proposed to pay the landlord the sum of \$505.00 plus the \$850.00 rent for May and move out at the end of May. The landlord was unwilling to accept this proposal. The landlord's representative reiterated the landlord's desire to end the tenancy at the end of April.

### Analysis

Based on the evidence presented there is at least \$505.00 outstanding for rent as of the date of the hearing. Because the landlord has not provided receipts for cash payments received from the tenants I am unable to verify the landlord's evidence as to the timing of rent payments, although based on the evidence presented at the hearing I prefer the landlord's testimony that there has been no rent payment for April. The tenants filed their application for dispute resolution on April 4, 2014. They did not mention the \$700.00 payment in the details of their dispute and I find it highly unlikely that they would have failed to mention this payment on April 1<sup>st</sup> in their application contesting the landlord's calculation of outstanding rent. The landlord's application was filed on April 9<sup>th</sup> and I find that had the tenants paid rent of \$700.00 as stated, the landlord would have noted the payment in her application.

I find that the tenants have not established that the Notice to End Tenancy for unpaid rent should be cancelled and the tenants have not disputed the one month Notice to End Tenancy for cause although they submitted a copy as part of their evidence. The tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

## Conclusion

Section 55 of the *Residential Tenancy Act* provides as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenants' application to dispute the landlord's Notice to End Tenancy. The landlord has applied for an order of possession. Pursuant to section 55 I grant the landlord an order for possession effective April 30, 2014 after service upon the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

Based on the tenants' admission at the hearing there is at minimum the sum of \$505.00 in unpaid rent that is due to the landlord. The landlord is prepared to forego any claim for unpaid rent in an amount that is greater than the amount of the \$425.00 security deposit. Based on the landlord's decision to limit the monetary claim for unpaid rent, I order that the landlord retain the security deposit in the amount of \$425.00 in full and final satisfaction of her claim for a monetary order for unpaid rent. The landlord's election at the hearing will preclude a future claim against the tenants for unpaid rent. I make no award with respect to the filing fee for the landlord's application.

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: April 25, 2014

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Residential Tenancy Branch

