



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPB MNDC FF  
CNR MNDC MNSD OLC PSF RPP LRE FF

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.12 states that the issues identified in the cross application must be related to the issues identified in the application being countered or responded to.

Upon review of the Landlords' application I have determined that I will not deal with all the dispute issues the Landlords have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy for unpaid rent, unpaid rent, or their request for an Order of Possession for breach of an agreement.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. As noted above, for disputes to be combined on an application they must be related. Not all the claims on the Tenants' application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to cancel the Notice to end tenancy issued for unpaid rent.

Based on the above, I hereby dismiss the Landlords' monetary claim for pain and suffering, and the balance of the Tenants' application relating to their requests for Orders against to have the Landlords comply with the Act, regulation, or tenancy agreement; provide services or facilities required by law; return the Tenants' personal property; and suspend or set conditions on the Landlords' right enter the property, with leave to reapply.

### Introduction

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

The Landlords filed on July 2, 2014, to obtain an Order of Possession for breach of an agreement and a Monetary Order for: 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 seeking an Order to cancel a 10 Day Notice to end tenancy issued for unpaid rent and to recover the cost of the filing fee from the Landlords for their application.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants.

The parties gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the 10 Day Notice to end tenancy be cancelled or upheld?
2. If upheld, did the Landlords appear at make an oral request for an Order of Possession?
3. Should the Landlords be granted an Order of Possession for breach of an agreement?
4. Have the Landlords proven entitlement for a Monetary Order?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on October 25, 2013 that was scheduled to end on October 25, 2014. The Tenants were required to pay rent of \$1,600.00 on the 25<sup>th</sup> day of each month and on October 25, 2013 the Tenants paid \$800.00 as the security deposit.

The Landlords submitted evidence that on May 14, 2014, the parties met and entered into a written mutual agreement to end the tenancy effective June 30, 2014. During that meeting the Landlords returned the Tenants' May 25, 2014 rent cheque that was payable for rent for the month of June 2014.

The Landlords testified that they contacted the Tenants, by email, to confirm the Tenants would be out of the unit by June 30, 2014, and that the Tenants told them they were refusing to move unless they were paid an additional \$800.00 from the Landlords.

The Landlords read into evidence part of their June 24, 2014 email to the Tenants where they wrote:

*We are confirming that the house will be vacated by 11 a.m. on June 30<sup>th</sup>.*

Upon reading the Tenants' response, the Landlords said they decided to offer the Tenants to remain in the rental unit under the original lease agreement, if the Tenants could return the payment for June rent and pay the July 2014 rent, as noted in their June 26, 2014 email provided in evidence.

The evidence included the Tenants' responses on June 26, 2014 where they agreed to continue their lease and look after the rent. However, the Landlords' send a final response on June 26, 2014 at 12:30 p.m. which included the following:

*THE DEAL IS OFF..please vacate by June 30<sup>th</sup> as agreed in our contract.*

The Landlords stated that when the Tenants failed to vacate the unit or pay the required rent the Landlords hired someone to serve the Tenants with the 10 Day Notice. The Tenants continue to reside in the rental unit and have not paid anything towards June, July or August 2014 rent.

The Landlords submitted that they had attended this hearing to ensure the 10 Day eviction Notice was upheld and they would be granted an eviction order so they could legally evict the Tenants.

The Tenants testified and confirmed they had not returned the rent payment for June 2014 and did not pay rent for July or August 2014. They continue to reside in the rental unit and argued they did not pay rent because they do not have a valid written tenancy agreement. The Tenants confirmed they met with the Landlords on May 14, 2014, during which they were returned their June 2014 rent and signed the mutual agreement to end their tenancy.

The Tenants clarified that they had accepted the Landlord's offer on June 25<sup>th</sup>, to continue with their original lease; however, when the Landlords failed to show up for a prescheduled meeting that was to occur on June 28, 2014, they decided not to pay the rent until they could get a new written tenancy agreement. They argued that the Landlords kept going back and forth, reneging on their offers, and demanded a payment of \$3,200.00 in order for them to stay in the unit, for June and July rent.

The Tenants stated that they continue to reside in the rental unit, despite them not paying rent, and argued that the 10 Day Notice was an illegal notice because the

Landlords failed to provide them with a new written tenancy agreement, after they signed the mutual agreement to end tenancy.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 45(1)(C) of the Act provides that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Residential Tenancy Policy Guideline # 11 provides that, with the consent of both parties, a notice to end tenancy may be withdrawn or abandoned prior to its effective date.

The undisputed facts are that on May 14, 2014, the parties signed a written Mutual Agreement to End the Tenancy effective June 30, 2014, and the Tenants' June 2014 rent payment was returned as compensation for mutually agreeing to end the tenancy.

Upon review of the email evidence dated between June 24 and June 26, 2014, I find the parties attempted to negotiate an agreement to withdraw or cancel the mutual agreement to end the tenancy, but agreement was not reached. Accordingly, this tenancy ended effective June 30, 2014, by mutual agreement; the Tenants were given their June 2014 rent back as compensation for signing the mutual agreement; and the Tenants were required to vacate the unit no later than June 30, 2014.

As the Tenants continue to reside in the rental unit, I find they are over holding and are in breach of the mutual agreement to end tenancy. Accordingly, I award the Landlords an Order of Possession, for breach of the mutual agreement to end tenancy.

Residential Tenancy Policy Guideline # 3 stipulates that if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the rental premises.

Based on the above, I hereby grant the Landlords monetary compensation for use and occupation of the rental unit for the period from July 1, 2014, to August 31, 2014 in the amount of **\$3,200.00** (2 x \$1600.00).

As noted above, the Tenants were returned their June 2014 rent, as compensation for the mutual agreement, which I have found ended this tenancy. Accordingly, I dismiss the Landlords' claim for June 2017 rent or occupation, without leave to reapply.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

As this tenancy ended in accordance with the mutual agreement, I find the Tenants' application to cancel the 10 Day Notice to now be moot, and their request is dismissed.

As I have dismissed the Tenants' application, I decline to award recovery of their filing fee.

### Conclusion

The Landlords have been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlords have been awarded a Monetary Order for **\$3,250.00** (\$3,200.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. 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.

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: August 29, 2014

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Residential Tenancy Branch

