



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Advanced Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR, MNR; MT, CNL, RP

### Introduction

This hearing was scheduled in response to 2 applications: i) a direct request application by the landlord for an order of possession for unpaid rent / and a monetary order as compensation for unpaid rent; and ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for landlord's use of property / and an order instructing the landlord to make repairs to the unit, site or property.

The landlord's agent attended and gave affirmed testimony. The landlord's agent testified that the notice of direct request proceeding and notice of hearing (the "hearing package") were personally served on the tenants on September 16, 2014. In this case, the landlord's application was scheduled to be heard during a participatory hearing, as a participatory hearing had already been scheduled for October 22, 2014 following an application filed earlier by the tenants on September 03, 2014. The landlord's agent also testified that the landlord had been served with the tenants' hearing package. Despite all of the foregoing, neither tenant appeared.

The landlord's agent testified that as the tenants vacated the unit on September 29, 2014, an order of possession is no longer being sought. In light of the scheduling of a participatory hearing in response to the landlord's direct request application (pursuant to which it is usual for an *ex parte* proceeding to occur), the landlord's agent made an oral request to amend the application to include an application to recover the filing fee and to retain the security deposit. The landlord's request was so granted.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the term of tenancy is from August 01, 2013 to January 31, 2014. This tenants named on this agreement are tenant "DV," a party to this dispute, and tenant "VJ," who is not a party to this dispute. Monthly rent of \$705.00 was due and payable in advance on the first day of each month, and a security deposit of \$352.50 was collected.

Following the expiration of the above agreement, tenancy continued on a month-to-month basis, however, a second written tenancy agreement was entered into for a term from April 01, 2014 to July 31, 2014. The tenants named on this agreement are tenant "DV" and tenant "RM," both parties to the current dispute. Following the expiration of the term, tenancy continued on a month-to-month basis.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated June 09, 2014. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is August 31, 2014. The reason shown on the notice in support of its issuance is as follows:

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent testified that rent was waived for the month of August 2014, pursuant to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**. However, the tenants failed to vacate the unit by August 31, 2014 and they filed an application to dispute the 2 month notice on September 03, 2014. As the tenants' application was filed outside the statutory 15 day period available for disputing a 2 month notice, the tenants also applied for more time to make an application to dispute a notice to end tenancy.

Arising from rent which was unpaid in the amount of \$705.00 when due on September 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 08, 2014. The notice was personally served on September 09, 2014. A copy of the notice was submitted in evidence. The landlord then filed a direct request application on September 16, 2014. The tenants made no further payment toward rent, did not apply to dispute the 10 day notice, and vacated the unit on September 29, 2014.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guideline, forms and more can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenants over-held the unit from September 01 to 29, 2014 after being served with a 2 month notice to end tenancy for landlord's use of property, which required that they vacate the unit by August 31, 2014. Accordingly, I find that the landlord has established entitlement to recovery of unpaid rent for this period in the amount of **\$681.50**, which is calculated as follows:

$$\begin{aligned} \$705.00 \text{ (monthly rent)} \div 30 \text{ (\# days in September)} &= \$23.50 \text{ (per diem rent)} \\ \$23.50 \text{ (per diem rent)} \times 29 \text{ (\# days of occupancy in September)} &= \$681.50 \end{aligned}$$

As the landlord has succeeded with this application I find that the landlord has also established entitlement to recovery of the full **\$50.00** filing fee.

**Sub-total: \$731.50** (\$681.50 + \$50.00)

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from the above, I order that the landlord retain the security deposit of **\$352.50**, and I grant the landlord a **monetary order** for the balance owed of **\$379.00** (\$731.50 - \$352.50).

As the tenants have vacated the unit and, as the tenants failed to attend the hearing in response to applications by both parties, although duly served with the landlord's hearing package, the tenants' application is hereby dismissed without leave to reapply.

### Conclusion

The tenants' application is hereby dismissed without leave to reapply.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$379.00**. Should it be necessary, this order may be served on the tenants, filed in the 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: October 22, 2014

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Residential Tenancy Branch

