



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, OPC, MNR, MNSD, FF, MT, CNC

### Introduction

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

- an Order of Possession for unpaid rent, cause and breach of an agreement with the landlords, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause, dated October 24, 2014 ("1 Month Notice"), pursuant to section 66; and
- cancellation of the landlords' 1 Month Notice, pursuant to section 47.

The landlords' agent ("landlords") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlords' agent gave sworn testimony that a 1 Month Notice was posted to the door of the tenant's rental unit on October 24, 2014. The tenant testified that he received the 1 Month Notice on October 26, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on October 27, 2014.

The landlords' agent testified that he served both tenants with the Application for Dispute Resolution hearing package ("Landlords' Application") on November 14, 2014 via registered mail. She provided a tracking number orally during the hearing. The tenant testified that he did not pick up the landlords' application, despite having received a mail notice to do so, as he assumed it was the same information in his own application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Landlords' Application on November 19, 2014, the fifth day after its registered mailing.

The tenant testified that he served the landlords with his Application for Dispute Resolution hearing package ("Tenant's Application") on November 9, 2014 via registered mail. The landlords' agent testified that the landlords received the Tenant's Application on November 14, 2014. In accordance with section 89 of the *Act*, I find that the landlord was served with the Tenant's Application on November 14, 2014, as confirmed by the landlord's agent.

### Preliminary Issues

The tenant applied for dispute resolution on November 6, 2014, after he was deemed to have received the 1 Month Notice on October 27, 2014. He was within the ten day time limit under section 47(4) of the *Act*. Therefore, his application for more time to make an application to cancel the 1 Month Notice, is moot.

During the hearing, the landlord's agent testified that she had applied for an order of possession for breach of an agreement with the landlords, based on the tenant's failure to pay rent due on the first day of each month, in accordance with the written tenancy agreement. She stated that she issued the 1 Month Notice for Cause for the reason that the tenant was repeatedly late paying rent more than three times during this tenancy. She clarified that she wished to amend her application to include an application for an order of possession for cause, based on the 1 Month Notice. As the tenant has filed a cross-application to cancel the 1 Month Notice for Cause, he is aware that the landlords are seeking an order of possession for cause and he is not prejudiced by this amendment. Accordingly, I agreed to amend the landlords' application to include an order of possession for cause. In any event, the landlords' application for an order of possession for breach of the tenancy agreement, is still valid. However, the landlords' agent confirmed that she wished to proceed with the hearing on the basis of the application for an order of possession for cause, based on the 1 Month Notice. Therefore, the landlords' application for an order of possession for breach of an agreement with the landlords, was abandoned at the hearing.

The landlords' agent confirmed that she was withdrawing her application for an order of possession for unpaid rent, as the 10 Day Notice, dated October 16, 2014, was invalid.

Accordingly, this hearing proceeded on the landlords' application for an order of possession for cause, a monetary order for unpaid rent, a monetary order to retain all or a portion of the tenant's security deposit and to recover the filing fee. The hearing also proceeded on the tenant's application to cancel the 1 Month Notice.

#### Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlords' agent testified that this tenancy began on May 1, 2005. After yearly renewable fixed terms ended on April 30, 2014, this transitioned to a periodic tenancy. Rent is payable monthly in the current amount of \$975.00 on the first day of each month. A security deposit in the amount of \$387.50 was paid by the tenant on April 12, 2005. The tenancy agreement was signed by both the tenant and landlord's agent on April 12, 2005, and a written copy was provided with the landlords' application. The tenant continues to currently reside in the rental unit. He testified that he was looking for another rental unit and was hoping to move soon.

The landlords provided a rent ledger dated from June 1, 2012 to November 1, 2014, documenting the rent and late charges during this tenancy. According to the ledger, the last time a zero outstanding balance was recorded was on December 1, 2012. The tenant testified that he has only been late with rent in 2014, and that it had only happened three times in July, October and November 2014. He states that this tenancy has lasted nine years to date and he has had a difficult time with work only in the last year.

The landlords are seeking a monetary order for unpaid rent and late charges in the total amount of \$988.00. The landlords' agent testified that she is seeking \$13.00 in unpaid rent and late charges from October 2014 and \$975.00 in unpaid rent from November 2014. The tenant testified that he owes these amounts. The tenant agreed that he owed late charges and non-sufficient funds charges for bounced rental cheques, to the landlords. He stated that he was unable to afford the outstanding amounts because he is looking for another rental unit and will be required to pay a security deposit there.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlords and tenant agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 15, 2014, by which time the tenant will have vacated the rental unit;
2. The tenant agreed to pay the landlords the total amount of \$1,038.00, which includes \$13.00 in unpaid October 2014 rent and late charges and \$975.00 in unpaid November 2014 rent, and \$50.00 for the filing fee for this Application, by 1:00 p.m. on December 15, 2014.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

### Conclusion

To give effect to the settlement reached between the parties, I issue the attached Monetary Order to be used by the landlords **only** if the tenant does not abide by the monetary terms set out in the above agreement. The landlords are provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not abide by the terms set out in their agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlords **only** if the tenant fails to vacate the rental premises by 1:00 p.m. on December 15, 2014. The landlords are provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by 1:00 p.m. on December 15, 2014. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Any dispute arising out of any non-payment of rent for December 2014 will have to be dealt with in accordance with the *Act*.

The landlord continues to hold the security deposit for this tenancy. As this tenancy has not yet ended, the provisions of section 38 of the *Act* remain in effect and any claim by either party for this deposit must be made in accordance with section 38 of the *Act*.

The landlords' application for an order of possession for breach of an agreement with the landlords, was abandoned at the hearing. The landlords' application for an order of possession for unpaid rent is withdrawn.

The tenant's application for more time to make an application to cancel the 1 Month Notice, is moot.

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: November 27, 2014

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Residential Tenancy Branch

