



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNDC, FF (Landlords' Application)  
CNR (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on March 9, 2015 and by the Landlords on March 12, 2015.

The Landlords applied for: an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent and utilities; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenants. The Tenants applied to cancel the notice to end tenancy for unpaid rent and utilities.

Both Landlords and the male Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained and the parties had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party on the evidence provided.

### Preliminary Issues

The Landlords provided documentary evidence prior to the hearing and the Tenants provided only a copy of the notice to end tenancy. However, I note that the Tenants had provided written submissions which were submitted to the Residential Tenancy Branch late and were not provided to me prior to the hearing. This evidence was provided to me after the hearing had concluded. Furthermore, the Tenant made no mention of these late written submissions during the hearing. As this evidence was provided for this hearing outside of the time lines stipulated by the Residential Tenancy Branch Rules of Procedure, and it was not before me at the time of the hearing, I did not consider this evidence.

The Landlords confirmed receipt of the Tenants' Application. However, the Tenant denied receipt of the Landlords' Application. Therefore, I turned my mind to the service

of the documents for this hearing by the Landlords. The female Landlord testified that she had served the Tenants with a copy of their Application and the Notice of Hearing documents by registered mail on March 13, 2015. The Landlords provided the Canada Post tracking number in oral testimony to support this method of service which was noted in the file. The Canada Post website indicates that the documents were signed for and received by the female Tenant on March 18, 2015.

As a result, I find there is sufficient evidence before me that the Landlords had served the Tenants with the required documents for this hearing pursuant to Section 89(1) (c) of the Act.

At the start of the hearing, the parties engaged into a discussion about the scheduling of the move out condition inspection. I informed the parties regarding the provisions of Section 35 of the Act and Part 3 of the Residential Tenancy Regulation. Both of these require the parties to complete the Condition Inspection Report when the rental suite is empty or on another mutually agreed date.

The parties were not in agreement as to whether the rental suite had been fully vacated. However, the Tenant provided the Landlord with a written address, as it appeared on the Tenants' Application, for the purposes of providing them with notice of the time to schedule the move out condition inspection.

#### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for unpaid rent for March 2015?
- Are the Landlords entitled to lost rent for April, 2015?
- Are the Landlords entitled to unpaid water utilities?

#### Background and Evidence

The parties confirmed that this tenancy for a single family dwelling home started on February 1, 2013 for a fixed term of one year which ended on January 31, 2014. The parties then engaged into another one year fixed term tenancy agreement which ended on January 31, 2015. The tenancy then continued on a month to month basis thereafter.

Rent under the written tenancy agreements was payable by the Tenants in the amount of \$3,000.00 on the first day of each month. A security deposit was paid to the

Landlords in the amount of \$1,500.00 by January 6, 2013, which the Landlords still retain.

The Tenant explained that he and his family had already vacated the rental home. However, the Tenant was unable to provide an exact date of when the rental home was vacated, offering dates of March 23, March 24 and then March 29, 2015 when he and his family had full moved out. The Tenant testified that he had texted the Landlords to explain that he had moved out of the rental suite at the end of March 2015.

The Landlords explained that they were not sure if the Tenant was telling the truth about vacating the rental home and could not confirm whether the Tenants had gone as they had not received any formal written notice from the Tenants. The Landlords explained that they were informed by the Residential Tenancy Branch to not do anything until this hearing took place due to the breakdown of the tenancy relationship. The Landlords still sought an Order of Possession for the rental home and the Tenant did not have any issue with the Landlords being issued with an Order of Possession.

The male Landlord testified that the Tenants had been habitually late paying rent during the duration of the tenancy. When the Tenants failed to pay rent on March 1, 2015, the Landlords decided that it was time to take more appropriate action and issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The Landlord testified that he went to the rental suite on March 6, 2015 and served the Notice in the presence of a witness to the Tenant's mother who was residing in the rental unit. The Notice had an effective date of vacancy of March 16, 2015 due to unpaid rent in the amount of \$3,000.00 and unpaid utilities in the amount of \$118.27.

The Landlords now seek to recover unpaid rent for the month of March 2015 and lost rent for April 2015 for a total amount of \$6,000.00. The male Landlord testified that the Tenants were responsible for putting utilities in their name and were not included in the tenancy agreement.

The Landlords became aware that the Tenants were in arrears for their water utility when they were informed by the city that the water to the rental unit was being turned off. The male Landlord explained that the water utility arrears in the amount of \$118.27 were added to the Landlords' property taxes. This amount was subsequently paid by the Landlords who now seek to recover it from the Tenants.

The Tenant testified that the water utility arrears related to a deposit which had not been requested by the city when he had put the utility in his name. As result, the city realized

their error and billed him for the deposit in the amount of \$118.27. However, the Tenant acknowledged that this is owed to the Landlords and did not dispute the amount. In relation to the outstanding rent, The Tenant confirmed receipt of the Notice from his mother in law on March 6, 2015 as indicated in the details section of his Application. The Tenant acknowledged that he was unable to pay rent to the Landlords on March 1, 2015 because he had not received funds which he used to pay his rent.

The Tenant submitted that he had previously paid rent to the Landlords late several times during the tenancy without any recourse from the Landlords. Therefore, he could not understand why this had suddenly become an issue to the Landlords; the Landlords even renewed the tenancy after the first year. However, after the Tenants received the Notice on March 6, 2015, the Tenant testified that the Landlord had engaged in a course of action where they were no longer enjoying peaceful and quiet enjoyment of the rental home.

The Tenant then provided detailed testimony regarding the deterioration in the Tenants' relationship with the Landlords. The Tenant testified that the Landlords: harassed the Tenants to get out of the property with threats to his family and verbal eviction; entered the property without proper notice on three occasions after which the police had to be called; illegally changed the locks; held the Tenants hostage in their home by having televisions cameras positioned outside of the house for a news cast; and, blocked the Tenants' vehicles from leaving the property on several occasions.

The Tenant submitted that the Notice did not give him sufficient time to vacate the rental suite and that the Landlords' continual interruptions, interference, and harassment prevented them from doing so in a reasonable and timely manner. The Tenant submitted that this was the reason why they made the Application to dispute the Notice.

The Tenant submitted that they should not be held responsible for any rent from March 6, 2015 onwards, which was the point after which the Landlords' began their harassment. The Tenant asserted that they should also not be held responsible for April 2015 rent because they had fully moved out by the end of March 2015.

The Landlords disputed the above allegations made by the Tenant in his oral testimony. The Landlords explained that they had tried to accommodate the Tenants multiple times during the tenancy when it came to their late rent payments; however, they could no longer suffer these repeatedly late payments and this is the reason why the Tenants were served the Notice.

## Analysis

In examining the Notice, I find that it was completed with the required contents that complied with Section 52 of the Act. I also accept the undisputed evidence that the Notice was served to the Tenants in accordance with Section 88(e) of the Act.

The Tenant confirmed receipt of the Notice on March 6, 2015 and made the Application to dispute the Notice on March 9, 2015. Therefore, I find the Tenants made their Application to dispute the Notice within the time limits set by Section 46(4) of the Act.

The Tenant explained that he had fully vacated the rental suite and had no issue with the Landlords being granted an Order of Possession for the rental home. For these reasons, I grant the Landlords an Order of Possession which is effective two days after service on the Tenants. Copies of this order are attached to the Landlords' copy of this decision and the order is enforceable through the Supreme Court of British Columbia.

In relation to the nonpayment of rent by the Tenants on March 1, 2015, I make the following findings. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** the landlord complies with the Act, unless the tenant has a right to deduct all or a portion of the rent.

As a result, I find that a landlord should not be without their rent for the sole reason that a tenant does not have funds available to pay a landlord on the day it is due under a tenancy agreement. I also find that the Landlords had the right under Section 46(1) of the Act to issue the Tenants with the Notice. This right is not forfeited or impeded by either, the type of tenancy (a fixed term or periodic tenancy), or a history of the Landlord accepting late rent payments prior to the issuing of the Notice; it is a fundamental right of the Landlord which can be utilised at any time during a tenancy when a tenant fails to pay rent.

The Tenant relied heavily on his oral testimony alone regarding allegations that the Landlords harassed them in such a way that they did not receive quiet enjoyment of the rental home after they were served the Notice. However, notwithstanding the Tenant's testimony was unsupported or corroborated by other evidence, I find these allegations are separate and have no bearing on the Tenants' requirement to pay rent in accordance with the tenancy agreement. The Act specifies strict circumstances when a tenant can withhold rent; alleged harassment by the Landlords is not a reason for the Tenants to withhold rent of their own volition without authority under the Act.

The Tenants were required to pay their rent within five days of receiving the Notice or dispute the Notice. While the Tenants did dispute the Notice, I find they have not disclosed sufficient evidence of a right under the Act to not pay rent for March 2015. Therefore, I find the Tenants were over holding the tenancy after the effective vacancy date of the Notice of March 16, 2015 and are responsible for March 2015 rent in the amount of \$3,000.00.

In relation to the Landlords' claim for lost rent of April 2015, I have taken into consideration Policy Guideline 3 to the Act which provides guidance on claims for rent and damages for loss of rent. The guideline explains:

*"In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month".*

[Reproduced as written]

According to the Tenant, the Tenant did not fully vacate the rental home until the end of March, 2015. I am unable to determine the exact date when the Tenants moved out and there is not sufficient evidence before me that the Tenant provided notice to the Landlord that the rental suite had been vacated. However, even if I accept the Tenant's testimony that they vacated the rental home at the end of March 2015, then this still would not have given sufficient time for the Landlord to re-rent the home for April 2015 in order to mitigate this loss. Based on the foregoing, I find that the Tenants are also responsible for the Landlords' loss of rent for April, 2015 in the amount of \$3,000.00.

In relation to the Landlords' claim for unpaid utilities, I accept the undisputed evidence of the Landlords that this amount is owed by the Tenants. Therefore, I award the Landlords \$118.27 for unpaid utilities.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenants the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is **\$6,218.27** (\$3,000.00 + \$3,000.00 + \$118.27 + \$100.00).

Section 72(2) (b) of the Act provides authority for a payment awarded to be deducted from a tenant's security deposit. I note that no interest is payable on the Tenants' security deposit. Therefore, pursuant to the Act, I order the Landlords to retain this amount in partial satisfaction of the total monetary claim awarded.

As a result, the Landlords are issued with a Monetary Order for the outstanding balance in the amount of **\$4,718.27** (\$6,218.27 - \$1,500.00). Copies of this order are attached to the Landlords' copy of this decision. This order must be served on the Tenants and may then be filed in the Small Claims Court and enforced as an order of that court.

### Conclusion

The Landlords are granted an Order of Possession. The Tenants have breached the Act by not paying rent in accordance with their tenancy agreement and the Act. Therefore, the Landlords may keep the Tenants' security deposit in partial satisfaction of their monetary claim. The Landlords are issued with a Monetary Order for the outstanding balance of their monetary claim in the amount of \$4,718.27.

The Tenants' Application is dismissed without leave to re-apply.

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 16, 2015

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Residential Tenancy Branch

