



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MND, MNR, FF

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent or damage pursuant to section 67; and
- authorization to recover their filing fee for this application for this tenancy pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of this hearing, the landlords testified that they had only learned the full name of the second tenant named as the second Respondent in their application after they applied for dispute resolution and served their documents. As the landlords admitted that the name of the second Respondent was not OO, as claimed in their application (a doubling of that Respondent's first name), I advised them that their claim for a monetary award against this incorrectly identified Respondent could not be amended at this hearing, as this second Respondent did not participate in this hearing.

During the course of this hearing, the tenant identified as the first Respondent in the landlords' application (the tenant), called into this telephone conference late. He apologized for his tardiness, noting that he had been involved in an accident on his bicycle, and was still bleeding from the aftermath of that accident. Although he said that he might have to be taken away by an ambulance, he did give sworn testimony and provided clear evidence as to the issues identified in the landlords' application. He said that he and the other tenants might be filing their own applications for dispute resolution after this hearing.

The tenant confirmed that the landlords handed him and the second Respondent the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on May 1, 2015. I find that the tenants were duly served with this 10 Day Notice on May 1, 2015.

The tenant also confirmed that the landlords handed him a copy of their application for dispute resolution and hearing package on May 12, 2015. I find that the tenant was duly served with these documents on May 12, 2015 in accordance with section 89 of the Act.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The male landlord testified that the tenants took possession of this basement rental unit in late March 2015, after having agreed to this tenancy, scheduled to begin on April 1, 2015. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlords continue to hold a \$400.00 security deposit paid on or about March 26, 2015. Although the landlords said that they drafted a written Residential Tenancy Agreement, they gave undisputed sworn testimony that the tenants did not sign that Agreement.

The landlords identified \$1,250.00 as owing in their original 10 Day Notice. This amount included \$450.00 in unpaid rent owing from April 2015, and \$800.00 for unpaid rent owing for May 2015. When the landlords did not receive any further payments towards this tenancy, the landlords modified the existing 10 Day Notice by adding a further \$800.00 in unpaid rent owing for June 2015 to the existing 10 Day Notice. They did not issue a new 10 Day Notice, but entered a copy of the amended 10 Day Notice into written evidence for this hearing.

The landlords requested an amendment of their original application for a monetary award of \$1,250.00 to \$2,050.00, the amount of unpaid rent currently owing. As the tenant was clearly aware that this additional rent became owing in June 2015, I allowed the landlords' requested amendment to the amount of their requested monetary award.

At the hearing, the tenant fully admitted that he owed his portion of the rent identified by the landlords as owing from April, May and June. He said that he hoped to be in a position to pay the landlords for his portion of unpaid rent once his employment insurance premiums were provided to him. He testified that he was unaware of any rent payments having been made to the landlords since the landlords handed him the 10 Day Notice. He also confirmed that he has not applied to cancel the landlords' 10 Day Notice. Although he requested a delay in the timing of any Order of Possession until June 30, 2015, the landlords said that they were not interested in providing the tenants with any additional time, as they have not been receiving full rent for this tenancy.

Analysis

I first note that a validly issued 10 Day Notice served to one tenant entitles a landlord to obtain vacant possession of the property from that tenant and any other tenant or occupant on the rental premises.

In this case, I find that the landlords incorrectly identified \$1,250.00 in rent owing as of May 1, 2015, when they issued their initial 10 Day Notice that same day. Had they waited until May 2, 2015 to issue the 10 Day Notice, they would have been correct in including the amount

identified as owing for May 2015 (i.e., \$800.00) in the amount of unpaid rent owing as of May 1, 2015. In other words, the tenants still had until the end of the day on May 1, 2015 to pay their full rent for May 2015, before this \$800.00 rent became owing. Despite this error, the 10 Day Notice did properly identify \$450.00 of the \$1,250.00 shown as owing as of May 1, 2015.

The tenants failed to pay the \$450.00 portion of the \$1,250.00 identified in the 10 Day Notice that was owing on May 1, 2015 in full, within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by May 11, 2015. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenant, any co-tenants and any other occupants on the premises do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Turning to the monetary portion of the landlords' application, I note that each individual who is a party to a tenancy agreement is individually and severally liable for any rights and responsibilities flowing from that agreement. In this case and on the basis of the evidence before me, I am satisfied that a tenancy agreement, albeit an oral one, existed between the landlords, the first Respondent identified as a tenant in the landlords' application and at least one other co-tenant. Under these circumstances, the landlords can pursue any breach of the terms of that oral tenancy agreement against any of the tenants who entered into that tenancy agreement.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, there is undisputed sworn testimony from both parties that the landlords have not received any payments towards this tenancy since they issued the 10 Day Notice on May 1, 2015. As rent of \$450.00 remains owing from April 2015, and a further \$800.00 remains owing for each of May and June 2015, I find that the landlords are entitled to a monetary award totalling \$2,050.00 against the tenant, the only individual properly identified in their application for dispute resolution.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) and any other occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order under the following terms in the landlords' favour against the tenant in order to allow the landlords to recover unpaid rent and their filing fee and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid April 2015 Rent	\$450.00
Unpaid May 2015 Rent	800.00
Unpaid June 2015 Rent	800.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,700.00</b>

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 17, 2015

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Residential Tenancy Branch

