



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MND, FF

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and damage pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant(s) pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord(s) pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the others' Application for Dispute Resolution package. The tenant also confirmed receipt of the 10 Day Notice to End Tenancy by registered mail on or about May 1, 2015. The tenant in attendance at the hearing ("the tenant") testified that he intends to vacate the rental unit by the end of June and he withdrew his application to cancel the notice to end tenancy. The tenant also testified that he is able to represent the interests of his co-tenant in this hearing. The landlords clarified that Landlord NM is landlord in title and Landlord AM attended hearing as a representative and assistant.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent and/or damage?

Is the landlord entitled to recover the filing fee for this application from the tenants or is the landlord entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The landlord gave evidence that the rental agreement for a fixed term began August 1, 2015. The landlords and tenants were friends. The rental for this unit was established at \$1600.00 payable on the first of each month. The landlord testified, confirmed by the tenant, that no security deposit was paid by the tenants.

The landlords applied for an Order of Possession for unpaid rent for the month of May 2015. Landlord NM testified that the tenant did not pay rent of \$1600.00 due on May 1, 2015. Landlord NM testified that the tenants had also failed to pay rent in March 2015 and April 2015. Landlord NM testified that she and her husband made numerous attempts to arrange a timeline or payment plan with the tenant as they were aware that he had lost his job. Landlord NM testified that the tenant would not meet with them to make any payment arrangements. Landlord NM testified that, as of the date of this hearing, the tenant had not paid rent for; March 2015; April 2015; May 2015; June 2015.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. Landlord NM and Landlord AM both testified that the tenant did not pay the May 2015 rent or any rental arrears after receiving the 10 Day Notice on May 1, 2015. The landlords applied for an Order of Possession to take effect immediately despite the fact that the tenant has testified that he will vacate the residence before the end of the month. The tenant testified that he intends to vacate the rental unit on June 28, 2015 and he withdrew his application to cancel the notice to end tenancy.

The landlords sought a monetary order in the amount of \$7300.00 for four months of unpaid rent as well as anticipated damage to the rental unit. Landlord NM testified that she is concerned that she has no security deposit in her possession and that there will be damage to the rental unit.

The tenant testified that he did renovation work within the rental unit and that he is owed money by the landlords. He testified that he did the work himself but provided a \$3000.00 bill to the landlords. He testified that the landlords paid \$400.00 to him for materials and work within the residence. He did not submit receipts for consideration at this hearing.

While the tenant acknowledged he did not pay rent for the months of April, May and June 2015, he claimed that he paid March 2015 rent. He testified that he had no receipt

or other documentary evidence in support of his testimony. He also testified that he was unable to remember the details of how or when he paid. Both landlords provided sworn testimony as to the details of period of time when rent first stopped being paid by the tenant.

### Analysis

The tenant conceded that he failed to pay the May 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant withdrew his application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, testifying he intends to vacate the rental unit by the end of June 2015. In accordance with section 46(5) of the *Act*, the tenant's failure to pay the rental arrears within five days led to the end of his tenancy on the effective date of the notice or to successfully apply to cancel the notice to end tenancy requires the tenant to vacate the rental unit. In this case, this required the tenant has provided sworn testimony that he intends to vacate the rental unit. The landlords sought an Order of Possession at this hearing to ensure the tenant in fact vacates the rental unit. In these circumstances, I find that the landlords are entitled to a 2 day Order of Possession.

I find that the landlords are entitled to receive an order for unpaid rent in March 2015, April 2015, May 2015 and June 2015. I accept the evidence offered by the landlord in testimony of both Landlord NM and Landlord AM. The tenant has acknowledged that he has failed to pay rent for the months of April 2015, May 2015 and June 201 however he testified that he paid rent in March 2015. In making this assertion, the tenant provided no evidence or details of how and when he paid the landlords for March 2015 rent. The landlords both provided a detailed summary of the circumstances surrounding the tenant's lack of payment and I accept that testimony. I am issuing the attached monetary order that includes the landlords' application for \$6400.00 in rental arrears from March 2015 to June 2015.

The landlords also applied for a monetary order with respect to the tenant's security deposit. Landlord NM testified that the tenant had not paid a deposit in the appropriate amount of 800.00 or in any other amount. She testified that, as she anticipates damage to the rental unit, she sought a monetary order in the amount of the security deposit to cover any out of pocket expenses she might incur as a result of damage to the rental unit.

A security deposit is described in the *Act* as "money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or

obligation of the tenant respecting the residential property..." Section 20 of the *Act* indicates that there are restrictions on a landlord as to the use of a security deposit:

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- ...
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

As these provisions of the *Act* indicate, a security deposit is an amount held that the landlord may claim against in the event that the landlord suffers loss as a result of the tenancy, in the form of damage to the rental unit or other expense. In this case, the landlord chose not to require a security deposit. In no circumstance is a security deposit something that is automatically payable to the landlord. A landlord must make a claim against the tenant if they have suffered a loss and prove that loss to a balance of probabilities in order to retain a portion of the security deposit or a monetary award in their favour. As the tenants have not vacated the rental unit and the landlord was unable to address what, if any damage there might be, this portion of the landlord's application is premature and not made in accordance with the requirements of the *Act*. I dismiss this portion of the landlords' application with leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for March 2015	\$1600.00
Rental Arrears for April 2015	1600.00
Rental Arrears for May 2015	1600.00
Rental Arrears for June 2015	1600.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$6500.00</b>

The landlords are provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 22, 2015

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Residential Tenancy Branch

