



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, CNC, MT

For the landlord: OPR, MNDC, MND, MNR, MNSD, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), and for an order granting more time to make an application to cancel a notice to end tenancy.

The landlord applied for an order of possession for the rental unit pursuant to a 10 Day Notice, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit and for unpaid rent, for authority to retain the tenants’ security deposit, and for recovery of the filing fee paid for this application.

Tenant “SH” (hereafter “tenant”) and the landlord’s agent (hereafter “landlord”) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### ***Procedural matter-***

At the beginning of the hearing, the tenant and the landlord confirmed receipt of the other’s application. The tenant submitted that tenant “RM”, her roommate, was not served with the landlord’s application. The landlord submitted that he served RM by handing the documents to the tenant.

Section 89(1) of the Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) by leaving the documents with the person or by registered mail.

For an order of possession for the rental unit, however, under section 89(2) a landlord is permitted to serve the tenant their application for dispute resolution by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant, as is the case here.

As the landlord served the attending tenant the application for dispute resolution by personal delivery, I find the landlord substantiated that he properly served this tenant as required under section 89(1). As to tenant RM, I find the landlord served RM as allowed under section 89(2) and the hearing proceeded against RM on the portion of the landlord's application for an order of possession for the rental unit only. I have excluded RM from consideration as to the landlord's request for monetary compensation.

*Preliminary matter-*

I have determined that the portion of the landlord's application dealing with a request for monetary compensation for alleged damage to the rental unit is unrelated to the primary issue of deciding the merits of the 10 Day Notice and whether the tenant owes outstanding rent. As a result, pursuant to section 2.3 of the Rules, I have severed the landlord's Application and dealt only with the tenant's application to cancel the Notice and the landlord's application seeking an order of possession for the rental unit and a monetary order for unpaid rent.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The parties submitted a copy of the written tenancy agreement with all parties signing the document on April 14, 2015, with a listed monthly rent of \$575.00. The tenant contended that she and RM were roommates and that they are to pay ½ of the monthly rent each.

Although I was not supplied another written tenancy agreement, the tenant submitted that she moved into the rental unit on August 15, 2014, with a lower monthly rent, and that RM moved into the rental unit in April 2015, all signing the tenancy agreement.

The landlord submitted evidence that on May 22, 2015, he served the tenants with the Notice, by leaving it with the tenant, listing unpaid rent of \$217.00 as of May 1, 2015. The effective vacancy date listed on the Notice was June 1, 2015.

The Notice informed the tenant that they had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The tenants did not file their application to dispute the Notice within the 5 days allowed, as their application was made on May 29, 2015.

The landlord submitted that since the Notice was issued to the tenants, the tenants have not made any further rent payments and owe for the months of June and July 2015.

#### *Tenant's response-*

As to the tenants' request for an order granting more time to make an application to cancel a notice to end tenancy, the tenant submitted she believed she had 2 extra days as the Residential Tenancy Branch ("RTB") is closed on the weekends, meaning that her interpretation was that the 5 days allowed was 5 business days.

As to the matter of the unpaid rent, the tenant submitted that she was not sure if RM's portion of the monthly rent was paid, but that she attempted to pay the rent and the landlord would not accept payment.

When asked how the tenant attempted to pay rent, the tenant submitted that she communicated to the landlord that the rent was available.

#### *Landlord's rebuttal-*

The landlord denied that the tenant offered any monthly rent.

#### Analysis

In considering the tenants' request to grant additional time to dispute the landlord's Notice, section 66(1) of the Act provides that an extension of time can only be granted where the applicant, the tenants in this case, has established that there are exceptional circumstances.

Residential Tenancy Branch Policy Guideline #36 offers examples of exceptional circumstances, such as if the party was in the hospital at all times. The tenants offered no proof that this or other exceptional circumstances existed.

Instances where a party did not understand the legislation are not exceptional circumstances. I therefore declined the tenants' request for additional time.

*Landlord's application-*

As both tenants listed on the above style of cause page signed the written tenancy agreement, I find that the tenants were joint tenants, jointly and severally liable for their obligations under the tenancy agreement and the Act, as tenants.

I additionally find the landlord submitted sufficient evidence to substantiate that the tenants were served a 10 Day Notice, that they owed the rent when the Notice was served, that the tenants did not pay the outstanding rent or file an application in dispute of the Notice within 5 days of receiving the Notice. As a result, I find the tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenants, pursuant to section 55(2) of the Act. The order of possession for the rental unit is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As I have found that the tenancy ended on the effective date of the Notice, or June 1, 2015, the tenants are now overholding in the rental unit, without paying rent to the landlord, causing the landlord to suffer a loss of rent revenue for June and July 2015.

I therefore find that the landlord is entitled to a monetary award of \$1417.00 comprised of the outstanding rent of \$217.00 through May, 2015, as listed on the Notice, loss of rent revenue of \$575.00 for June and July 2015, *each*, and the \$50.00 filing fee paid by the landlords for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1417.00, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

*Tenants' application-*

As I have granted the landlord's application for an order of possession for the rental unit and for a monetary order pursuant to the Notice, and as I have determined the tenants

did not file their application within the 5 days as allowed under the Act, I dismiss the tenants' application seeking cancellation of the 10 Day Notice, without leave to reapply.

I have not considered the tenants' request for cancellation of the 1 Month Notice, as I have granted the landlord an order of possession for the rental unit.

### Conclusion

The tenants' application is dismissed due to their failure to make a timely application in dispute of the Notice and as I have granted the landlord's application.

The landlord's application for an order of possession for the rental unit and a monetary order is granted.

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: July 15, 2015

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Residential Tenancy Branch

