



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF  
                                 CNR

### Preliminary Issues

The Landlord filed their application for dispute resolution on June 08, 2015, seeking an order of possession and monetary compensation for \$2,300.00. In the Landlord's July 9, 2015, evidence submission they included a list of Total Damages indicating they were seeking compensation in the amount of \$3,724.70.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Landlord did not file an amended application and simply listed the additional claim amounts in their evidence. Accordingly, I declined to hear matters which were involved an amount not claimed on the original application. The remainder of the Landlord's monetary claim was dismissed, with leave to reapply.

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on June 8, 2015, seeking an Order of Possession for unpaid rent and utilities, and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on June 05, 2015, seeking an Order to cancel the 10 Day Notice to end tenancy.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenants. The Landlord provided affirmed testimony that the Tenants were personally served notice of his application and this hearing on June 9, 2015. The Landlord affirmed that the Tenants were personally served with copies of his evidence on July 9, 2015. Based on the submissions of the Landlord I find the Tenants were sufficiently served notice of this proceeding, in accordance with section 89 of the Act. Accordingly, I proceeded in absence of the Tenants.

#### Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

#### Background and Evidence

The Landlord submitted evidence that the Tenants entered into a month to month written tenancy agreement that began on March 1, 2014. Rent was initially payable in the amount of \$2,200.00 and was increased by mutual agreement to \$2,300.00 per month effective March 1, 2015. On March 1, 2014 the Tenants paid \$1,100.00 as the security deposit plus \$400.00 as the pet deposit.

The Landlord testified that when the Tenants failed to pay their June 1, 2015 rent the Landlord personally served them a 10 Day Notice on June 2, 2015. The Tenants remained in the unit until July 5, 2015. The Landlord testified that on July 4, 2015 he posted a notice of entry and on July 5, 2015 he found the rental unit had been vacated and two keys and the garage remote were left inside the rental unit.

The Landlord submitted that he is seeking the unpaid June 2015 rent of \$2,300.00 as he regained possession of the rental unit on July 5, 2015,

#### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

## 7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

### Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on June 2, 2015, and the effective date of the Notice was **June 12, 2015**.

The Tenants disputed the Notice; however, the Tenants did not appear at the scheduled teleconference hearing and did not pay the outstanding June 2015 rent. Rather, the Tenants vacated the rental unit on or before July 4, 2015 leaving the keys and garage remote inside the rental unit. Based on the submissions of the Landlord I accept that the Landlord regained legal and full possession of the rental unit as of July 5, 2015. Therefore, there is no need to issue a written Order of Possession.

The Landlord claimed unpaid rent of \$2,300.00 that was due June 1, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for June 1, 2015, in the amount of **\$2,300.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

### Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for thirteen minutes and no one on behalf of either Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenants, I order the Tenants' application dismissed, without liberty to reapply.

#### Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

The Landlord has primarily succeeded with his application. He regained full possession of the rental unit as of July 5, 2015 and has been awarded monetary compensation in the amount of \$2,350.00 (\$2,300.00 + \$50.00).

The Landlord has been issued a Monetary Order in the amount of **\$2,350.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 27, 2015

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Residential Tenancy Branch

