



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Anwar Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenant: CNR, RP, ERP, MT, MNDC, FF  
For the landlord: OPR, 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 ("Act").

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order granting more time to make an application to cancel a notice to end tenancy, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for damage to the rental unit and unpaid rent pursuant to the Notice, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord attended the hearing; the tenants did not attend.

The landlord stated that he served each tenant his application for dispute resolution and notice of hearing letter by personal delivery on or about June 17, 2015.

Based upon the landlord's submissions, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenants' absence.

Thereafter the landlord was provided the opportunity to present his evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence 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.

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

*Procedural matter*-In the absence of the tenants to present their claim, pursuant to section 10.1 of the Rules, I dismiss the tenants' application, without leave to reapply.

*Preliminary matter*-I have determined that the portion of the landlord's application dealing with a request for repairs and damages is unrelated to the primary issue of his request seeking enforcement of the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the landlord's application and dismissed that portion of the landlord's request for additional compensation, with leave to reapply.

The hearing proceeded only upon the landlord's application seeking enforcement of the Notice.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, to authority to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

#### Background and Evidence

The landlord supplied a written tenancy agreement showing that this tenancy began on June 1, 2014, that monthly rent is \$970.00, and that the tenants paid a security deposit of \$485.00 at the beginning of the tenancy.

The landlord gave evidence that on June 4, 2015, he served the tenants with their Notice, by leaving it personally with the tenant "PB", listing unpaid rent of \$970.00 as of June 1, 2015. The effective vacancy date listed on the Notice was June 14, 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 file their application to dispute the Notice, but did not attend the hearing in support of their application and it has been dismissed.

The landlord submitted that since the Notice was issued to the tenants, there have been no rent payments and the tenants still owe the monthly rent for June 2015. The landlord submitted further that their monetary claim of \$5000.00 included possible unpaid rent for the months of July, August and September 2015.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to pay rent by the date it is due, the landlord may serve the tenant with a Notice under section 46 of the Act.

In the case before me, although the tenants filed an application to dispute the Notice within the 5 days allowed under 46(4) of the Act, I find the landlord submitted sufficient oral and documentary evidence that the tenants owed the landlord rent when the Notice was issued, that they did not pay all of the rent owed to the landlord within 5 days of receiving the Notice, and did not demonstrate that they had a legal right to withhold rent.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent in accordance with the Act and the tenancy agreement and the landlord is entitled to regain possession of the rental unit.

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. 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, 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.

I also find that the landlord submitted sufficient evidence to show that the tenants owed and failed to pay rent for June, July, and August 2015, and is therefore entitled to a monetary award of \$2960.00, comprised of outstanding rent of \$970.00 for June, July,

and August, 2015, each, and the \$50.00 filing fee paid by the landlord for this application, which the landlord is also granted due to his successful application.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$485.00 in partial satisfaction of his monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$2475.00, 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.

The landlord is at liberty to apply for unpaid rent or loss of rent revenue for September 2015.

#### Conclusion

The tenants' application is dismissed due to their failure to attend the hearing 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: August 14, 2015

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Residential Tenancy Branch

