



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ENTRE NOUS FEMMES HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*Tenants were issued Notice to End Tenancy on June 9, 2015. The notice was handed to them directly. The rent for June was received July 3, 2015. Rent for July has not been received as of the date of this application. I am also seeking an order of possession.*

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy in July 2015, which is after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 08, 2015, by the Landlord. The Landlord seeks an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony.

On a procedural note the Tenants signed into the hearing nine minutes after the hearing had started. I informed the Tenants of the evidence that had been presented by the Landlord prior to their arrival and gave them the opportunity to ask questions. The Tenants stated that they did not have any questions and the hearing continued.

During the hearing each party was given the opportunity to provide their evidence orally and respond to the other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

- 1) Has the Landlord proven entitlement to an Order of Possession?
- 2) Has the Landlord proven entitlement to a monetary order?

#### Background and Evidence

The Landlord submitted evidence that the parties executed a written fixed term tenancy agreement that commenced on April 1, 2015 and is set to expire on September 30, 2015. The market value rent for the unit is listed in the agreement as being \$983.00 and the Tenants were required to pay a subsidized rent of \$621.00 on or before the first of each month.

The Landlord testified that the Tenants have occupied the rental unit since June 1, 2013 and had signed a subsequent fixed term tenancy on March 31, 2015. On May 31, 2013 the Tenants paid a security deposit of \$492.50 based on the market value rent which was transferred to their new fixed term agreement.

The Landlord testified that when the Tenants failed to pay their June 1, 2015 rent a 10 Day Notice was personally served to them on June 9, 2015, listing an effective date of June 19, 2015 for the unpaid rent of \$621.00.

On June 22, 2015 a payment was received from Income Assistance of \$621.00 which was deposited on July 3, 2015 and applied to the outstanding June 2015 rent. A receipt was issued to the Tenants advising that the payment had been received for "use and occupancy only".

No payments were received in July or August 2015; however, a second payment of \$621.00 was received from Income Assistance on August 26, 2015 in the amount of \$621.00. The cheque stub on this payment indicated it was for September rent; however, the Landlord applied the payment to the outstanding amount owed for July,

2015, as per normally accepted accounting practices. A receipt was mailed to the Tenants indicating that the August 26, 2015 payment was received for “use and occupancy only”.

The Landlord stated that she wished to proceed with her request for an Order of Possession effective September 30, 2015 and a Monetary Order for August and September occupancy of \$1,242.00 (2 x \$621.00).

Each Tenant was given the opportunity to submit oral testimony; however, each declined and stated that the Landlord's requests were reasonable.

The Landlord now seeks to recover the unpaid rent, parking, and late fees for all of March and April 1 – 19, 2015. Late fees are provided for in section # 6 of the tenancy agreement under the heading of Arrears.

### Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

#### Regarding the 10 Day Notice

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Section 46(1) of the *Act* provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

#### Regarding the Request for an Order of Possession

Section 55(2) of the *Act* provides that A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: (a) a notice to end the tenancy has been given by the tenant; (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; (c) the tenancy agreement is a fixed term tenancy agreement that provides

that the tenant will vacate the rental unit at the end of the fixed term; (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Regarding the request for a Monetary Order

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.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

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.

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

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 9, 2015 and the effective date of the Notice was June 29, 2015. The Tenant did not pay the rent within the required timeframe and they did not dispute the Notice. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **June 29, 2015**. Accordingly, I grant the Landlord's request for an Order of Possession effective **September 30, 2015**.

The Landlord claimed for unpaid rent that was due June 1, 2015 in the amount of \$621.00. Payment was received on June 22, 2015, deposited on July 3, 2015, and a receipt was issued for use and occupancy only. Accordingly, I dismiss the Landlord's request for June 2015 rent as it has since been paid.

A second payment of \$621.00 was received on August 26, 2015 and was applied to use and occupancy of the rental unit during the month of July 2015. Therefore, the Tenants have a balance owing for August and September 2015.

As noted above this tenancy ended **June 29, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit from August 1 to September 30, 2015, not rent. Accordingly, the Landlord is entitled to use and occupancy and any loss of rent from August 1 to September 30, 2015, in the amount of **\$1,242.00** (2 x \$621.00).

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Use & occupancy August 1 – September 30, 2015	\$1,242.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,292.00
<b>LESS:</b> Security Deposit \$492.50 + Interest 0.00	<u>-492.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 799.50</u></b>

### Conclusion

The Landlord succeeded with their application and was granted an Order of Possession and a Monetary Order in the amount of \$1,292.00 which was offset against the security deposit of \$492.50, leaving a balance due to the Landlord of \$799.50.

The Landlord has been issued an Order of Possession effective **September 30, 2015, after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order in the amount of **\$799.50**. 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.

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: September 11, 2015

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Residential Tenancy Branch

