



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HAYTHAM DAWOOD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LANDLORD: OPR, MNR, MNSD, MNDC, FF  
TENANT: CNC, FF, O

### Introduction

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

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on July 23, 2015 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on July 17, 2015 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on February 1, 2015 as a fixed term tenancy with an expiry date of July 31, 2015 and then continued on a month to month basis. The Tenant said rent is \$850.00 per month and utilities are \$100.00 per month. The Landlord said the rent is \$800.00 per month and utilities are not in the tenancy agreement. The Landlord said he had a signed tenancy agreement and the Tenants said they did not have a copy of the tenancy agreement. The Tenants said they paid a security deposit of \$425.00 on February 5, 2015 and the Landlord said the Tenants paid a security deposit of \$400.00 in advance of the tenancy. The Tenants said an agent for the Landlord did a condition inspection report at the start of the tenancy but the Tenants did not receive a copy.

The Landlord's agent said that the Tenants did not pay rent of \$800.00 for the months of July, August and September, 2015 in the total amount of \$2,400.00. Consequently the Landlord's agent requested an Order of Possession and a monetary order for unpaid rent.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$2,400.00 plus the \$50.00 filing fee and to retain the Tenants' security deposit of \$400.00 as partial payment of the unpaid rent.

The Tenants said they agree that they have unpaid rent for July, August and September, 2015. The Tenants said they tried to pay the rent but the Landlord would not accept it and they believe the Landlord was evicting them so that the Landlord can sell the house. The Tenants said that the Landlords would not communicate with them and the Landlord has been sending unidentified persons to the rental unit without documented reasons. The Tenants said this eviction is not fair and they were told that the Landlord could not do this. As well the female Tenant said she was told that if a Landlord is ending the tenancy to sell the house the Landlord has to compensate the Tenants. The Female tenant said this is partially the reason why they did not pay the rent.

The Landlord's agent said the Tenants have the Landlord's address and email and the Landlord had sent text messages to the Tenants to pay the rent by e-transfer. The Landlord said the Tenants have not provided any evidence that they tried to contact the Landlord. The Landlord's agent said the Tenants have not paid the rent and the Landlord wants to end the tenancy as soon as possible.

The male Tenant said there are a number of problems with this tenancy and they may want to make a claim against the Landlord in the future.

In conclusion all parties agreed there was unpaid rent for July, August and September, 2015 but the parties disagreed on why the rent was not paid.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenants application as they agree they have unpaid rent for July, August and September, 2015. I also accept the Landlord's agent's rent calculation of \$800.00 per month and a security deposit of \$400.00. I find the Landlord's 10 Day Notice to End Tenancy for unpaid rent dated July 9, 2015 is valid and in full effect. The Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the unpaid rent of \$2,400.00.

Further pursuant to Section 55 of the Act I award the Landlord an Order of Possession as a result of the unpaid rent and the 10 Day Notice to End Tenancy. The effective vacancy date on the Order of Possession is for 2 days after service of the Order on the Tenants as the effective vacancy date on the 10 Day Notice to End Tenancy for unpaid rent is well past.

As the Landlords have been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,400.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 2,450.00
Less:	Security Deposit	\$ 400.00
	Subtotal:	\$ 400.00
	Balance Owing	\$ 2,050.00

Conclusion

An Order of Possession effective 2 days after service on the Tenants and a Monetary Order in the amount of \$2,050.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply and the Tenants are ordered to bear the cost of \$50.00 for their application which they have already paid.

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 21, 2015

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Residential Tenancy Branch

