



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: OPR MNR FF  
For the tenants: MT CNR

### Introduction

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

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The tenants applied for more time to cancel a notice to end tenancy, and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The tenants and the landlord attended the hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matter

The landlord testified that he never received the tenants’ application and the tenants confirmed that the wrong person was served with the tenants’ application. As a result, and due to a service issue, the tenants’ application is dismissed with leave to reapply

due to a service issue. I note, however, that dismissing the tenants' application with leave to reapply does not extend any timelines under the *Act*.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that a verbal tenancy agreement was formed and that the tenancy began on July 1, 2015. The parties agreed that monthly rent of \$1,200 was due on the first of each month. The parties agree that July 2015 rent was paid in cash and that the landlord failed to issue a receipt to the tenants for July 2015 rent. The parties agreed that no security deposit or pet damage deposit was paid during the tenancy.

A copy of the 10 Day Notice dated August 5, 2015, was submitted in evidence. The tenants stated that they received the 10 Day Notice on August 9, 2015. The tenants stated did not dispute the 10 Day Notice until August 17, 2015, which is beyond the 5 day timeline provided for under section 46 of the *Act*. The 10 Day Notice indicates that \$1,200 in rent was owed as of August 1, 2015. The tenants testified that rent was paid late on August 27, 2015, which the landlord denied. The effective vacancy date listed on the 10 Day Notice is August 17, 2015.

The parties agreed that rent for September 2015 has not been paid by the tenants, and the tenants continue to occupy the rental unit.

Regarding August 2015 rent, the tenant D.H. testified that rent was paid in cash on August 27, 2015 at approximately 2pm when an agent for the landlord attended the rental unit. Tenant R.L. was asked when and how rent was paid when tenant D.H. was asked to leave the room during the hearing, and tenant R.L. testified that twelve \$100 bills were paid in cash on August 27, 2015 to the agent of the landlord and that no receipt was issued.

The landlord confirmed that he has never met the tenants and that all contact with the tenants have been through his agents.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

**Order of Possession** – The effective vacancy date of the 10 Day Notice was August 17, 2015, which automatically corrects under the *Act* to August 19, 2015 as the 10 Day Notice was received on August 9, 2015 according to the tenants. There is no dispute that the tenant failed to pay August 2015 rent within the 5 days required pursuant to section 46 of the *Act*, and although their application to dispute the 10 Day Notice was dismissed with leave to reapply, I find that the 10 Day Notice is valid as the tenants testified that their rent was not paid until August 27, 2015. Therefore, given the landlord's request for an order of possession, I uphold the 10 Day Notice and I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

**Claim for August unpaid rent** – I find the landlord has provided insufficient evidence to prove that August 2015 rent was not paid by the tenants. I have taken into account that fact that the landlord has breached section 26(2) of the *Act* when the tenants paid rent for July 2015 in cash, and the landlord admitted that neither he nor an agent on his behalf issued a receipt to the tenants for the rent payment made in cash for July 2015. Furthermore, I have taken into account that the tenants testified that while rent was paid late on August 27, 2015, which results in the tenancy ending as the 10 Day Notice has been upheld, the tenants did agree that September 2015 rent was not paid. Based on the above, I prefer the testimony of the tenants over that of the landlord as the landlord has breached section 26(2) of the *Act* by not issuing receipts for cash rent payments as required by the *Act*. **I dismiss** the landlord's application for unpaid rent of \$1,200 for August 2015 due to insufficient evidence.

**Claim for September loss of rent** – There is no dispute that the landlord suffered a loss of September 2015 rent in the amount of \$1,200 as the tenants continue to occupy the rental unit and admitted to not paying rent for September 2015. Therefore, I grant the landlord **\$1,200** for the loss of September 2015 rent.

As the landlord was partially successful with his application, I grant the landlord the recovery of half of the filing fee, for a total of **\$25**.

**Monetary Order** – I find the landlord has established a total monetary claim of **\$1,225**, comprised of \$1,200 in loss of rent for September 2015, plus \$25 of the filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of **\$1,225**.

### Conclusion

The tenants' application is dismissed with leave to reapply due to a service issue. I note that this decision does not extend any applicable timelines under the *Act*.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$1,225, comprised of \$1,200 in loss of rent, plus \$25 of the filing fee.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of \$1,225. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 22, 2015

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Residential Tenancy Branch

