



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent and utilities, and for a monetary order for unpaid rent and utilities, to retain the tenants’ security deposit or pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, a witness for the landlord, and the tenants attended the teleconference hearing and gave affirmed testimony. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenants confirmed that they received the landlord’s documentary evidence and that they had the opportunity to review the documentary evidence. The tenants confirmed that they did not submit documentary evidence in response to the landlord’s application. I find that the tenants were duly served with the Notice of Hearing, Application and documentary evidence in accordance with the *Act*.

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord was advised that his application for repairs, carpet replacement, and repainting were premature as at least one of the tenants continued to occupy the rental unit. As a result, those portions of the landlord’s application are **dismissed with leave to reapply**.

The landlord paid a total of \$100 for the filing fee after amending his application from \$4,800 to \$10,000, however, confirmed during the hearing, that his monetary claim was

actually a lesser amount; \$7,200 comprised of three months of rent owing at \$2,400 per month. The landlord is also seeking the recovery of the \$100 filing fee.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that a fixed term tenancy began on September 1, 2014. The parties disputed the amount of monthly rent. The landlord testified that monthly rent was \$2,400 and included a furnished rental unit with furniture. The tenants' position was that monthly rent was \$2,000 and that the other \$400 was related to a "rent to own" arrangement to purchase the rental unit furniture which the landlord denied. The landlord testified that at the start of the tenancy, he asked the tenants to make him an offer to purchase the furniture and claims that the tenants failed to do so, so the tenancy agreement remained as agreed to, a furnished rental unit with no option to purchase the furniture. The tenancy agreement submitted in evidence indicates that monthly rent was \$2,400.

The parties agreed that a security deposit of \$1,200 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The tenant testified that she did not receive the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") July 5, 2015 until August 7, 2015 when she returned from a camp, which the landlord did not dispute. There was no effective vacancy date listed on the 10 Day Notice. The amount of rent owed listed on the 10 Day Notice is \$2,400 due July 1, 2015. The landlord testified that rent of \$2,400 was not paid subsequently for the months of August and September of 2015. The tenant confirmed that no rent for July, August or September 2015 has been paid to the landlord. Tenant J.W. stated that the landlord did not sign a form to assist her with obtaining a rent subsidy, which the landlord denied. The landlord stated that no such form was ever presented to him from the tenants. The tenants did not dispute the 10 Day Notice.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** – Based on the tenants' testimony, I find that the tenants failed to pay the rent owed as listed on the 10 Day Notice. Furthermore, the tenants did not dispute the 10 Day Notice. Although the 10 Day Notice did not indicate an effective vacancy date, I find that pursuant to section 68(1) of the *Act*, the tenant knew or should have known the effective vacancy date was omitted from the 10 Day Notice and would be 10 days from the date of receiving the 10 Day Notice. As a result, and pursuant to section 53 of the *Act* I amend the 10 Day Notice to reflect 10 days from the date the tenant confirmed she received the 10 Day Notice, August 7, 2015, and I find the effective vacancy date of the 10 Day Notice was August 17, 2015.

As the tenants did not pay rent or dispute the 10 Day Notice within 5 days of August 17, 2015, I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was August 17, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

**Claim for unpaid rent and loss of rent** – Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, and the tenant's testimony that rent was not paid for the months of July, August or September of 2015, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. At least one of the tenants continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession.

I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$7,200** comprised of \$2,400 in unpaid rent for July 2015, \$2,400 in unpaid rent for August 2015, and loss of \$2,400 rent for September 2015. I find that monthly rent was \$2,400 as the security deposit was half of that amount, and the written tenancy agreement would take precedence over any disputed verbal arrangement regarding a rent to own furniture scenario which I find to be unbelievable. I therefore, find the tenancy agreement was for a furnished rental unit with a monthly rent of \$2,400.

As the landlord's application had merit, I find the landlord is entitled to the recovery of the cost of the filing fee in the amount of **\$100**.

Given the above, I find the landlord has established a monetary claim in the amount of **\$7,300** comprised of unpaid rent and loss of rent, and the recovery of the cost of the filing fee.

The tenants' security deposit of \$1,200 has accrued no interest since the start of the tenancy, which the landlord continues to hold. I **authorize** the landlord to retain the tenants' full security deposit of \$1,200 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$6,100**.

### Conclusion

The landlord's application is successful.

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

The landlord has established a monetary claim of \$7,300. The landlord has been authorized to retain the tenants' full security deposit of \$1,200 in partial satisfaction of the landlord's monetary claim. The landlord has also been granted a monetary order under section 67 in the amount owing by the tenants to the landlord in the amount of \$6,100. 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 18, 2015

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Residential Tenancy Branch

