



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlords: OPB, OPR, MNR, MNSD, MNDC, FF  
Tenants: CNR, MNDC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and monetary order. The tenants sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

After closing the hearing down and providing the parties with information on the processes following the hearing the female tenant continued to provide testimony and she would not stop. As a result, I stopped the tenant and informed both parties that I was closing the hearing. All parties were disconnected.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for breach of an agreement; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for compensation, pursuant to Sections 46, 67, and 72 of the *Act*.

### Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on April 12, 2015 for a 3 month fixed term tenancy beginning on May 1, 2015 for the monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month. The tenancy agreement contains a clause that requires the tenants to vacate the rental unit at the end of the fixed term.

The landlord originally testified that he was holding a \$350.00 security deposit that he had received from the female tenant prior to this tenancy. He explained that he had collected \$350.00 from this female tenant and another \$350.00 from the female tenant's daughter who has since moved out of the rental unit but no amount of either deposit has been returned to either the female tenant or the daughter. As such, I find the landlord is holding a security deposit in the amount of \$700.00 for this tenancy.

The landlord seeks compensation for the tenant's failure to pay the full amount of rent for the months of July (\$1,090.00), August (\$1,200.00) and September (\$1,200.00) 2015. The landlord seeks a monetary order in the amount of \$3,490.00 for this unpaid rent.

As a result of the tenants' failure to pay the full amount of rent for the month of July 2015 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 13, 2015 with an effective date of July 23, 2015.

The landlord submits that he has paid rent in the amount of \$600.00 for the months of August and September 2015 at another rental property because the tenants failed to vacate the rental unit in accordance with the tenancy agreement. In support of this claim the tenant has submitted a copy of a tenancy agreement for a fixed term tenancy beginning July 1, 2014 for a monthly rent of \$600.00 due on the 1<sup>st</sup> of each month.

The tenants confirmed by their testimony that they paid the landlord \$110.00 for July 2015 rent but that then the landlord informed their ministry worker that there was a dispute between the parties and the ministry worker stopped issuing the tenants rent monies.

The tenants submit that the landlord has been harassing them since November 2014 but they provided no detail as to what this harassment was or when it occurred and they seek \$2,000.00. They stated the landlord has discriminated against them but have failed to provide any evidence to corroborate their claim, they seek \$4,000.00.

The tenants state that the landlord forced them to sign a new tenancy agreement in April 2015 by threatening them that they would have to move out in April 2015 if they did not sign the new 3 month fixed term tenancy that required them to move. The landlord submits that the tenancy agreement that ended in April 2015 required the tenants to vacate the unit at the end of that fixed term. The tenants seek \$2,000.00

The tenants submit that the landlord threatened them with having the police come and evict them if they would not vacate the rental unit. The tenants seek compensation for this threat. The tenants seek \$2,000.00

The tenants seek \$10,000.00 because the landlord submitted a letter dated August 10, 2015 to their ministry worker advising the ministry that the tenant had not been paying rent. The tenants see this as a breach of privacy and seek compensation for the breach.

The tenants also seek \$5,000.00 for another document dated September 1, 2015 however the tenants failed to submit any document dated September 1, 2015.

When asked to clarify how the tenants determined this amount, the male tenant explained that the rental unit was not suitable for occupation, he went on to say that none of the appliances worked properly.

### Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
  - i. Section 45 (tenant's notice);
  - ii. Section 46 (landlord's notice: non-payment of rent);
  - iii. Section 47 (landlord's notice: cause);
  - iv. Section 48 (landlord's notice: end of employment);
  - v. Section 49 (landlord's notice: landlord's use of property);
  - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
  - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Based on the submissions from both parties I find the parties entered into a tenancy agreement on April 12, 2015 that required the tenants to vacate the rental unit on July 31, 2015.

I find the tenants have provided no evidence of being forced into signing such an agreement. While the tenants submit that the landlord told them they had to sign it or he would require they leave the rental unit I find that he did so because the previous fixed term tenancy agreement stated that the tenants had to vacate the rental unit by the end of April 2015.

As such, I find the landlord was simply informing the tenants of the obligations they had agreed to when they signed the previous tenancy agreement. If the tenants had forgotten the original agreement required them to vacate at the end of April 2015 they placed stress on themselves and I find this does not constitute duress.

As a result, I find the tenancy ended on July 31, 2015.

As I have determined the tenancy ended on July 31, 2015 I make no findings of fact or law as they relate to the 10 Day Notice to End Tenancy for Unpaid Rent with the exception of dismissing the portion of the tenants' Application seeking to cancel the 10 Day Notice.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As to the landlords' monetary claim I accept the testimony of both parties that the tenants did not pay the full rent for the month of July 2015. As such, I find the landlord has established the tenants owe \$1,090.00 for the month of July 2015.

I also find that the tenants have subsequently not paid any amount for overholding of the property for the period from August 1, 2015 to the current date. As such, I find the landlord is entitled to compensation in the amount of \$2,400.00.

In regard to the landlord's claim for the costs of renting accommodation for himself during this period, I find the landlord has established that had the tenant's vacated the rental unit at the time they had agreed to the landlord would not have had to pay any additional rent in his current tenancy. I find the landlord is entitled to \$1,200.00 for this loss.

As to the tenants' monetary claim, I find the tenants have failed to provide any evidence at all of harassment; discrimination; signing of a tenancy agreement under duress; threats; or other losses. I find the tenants seek to penalize the landlord for ending the tenancy and for the provision of what the tenants have determined is unsuitable living accommodation. As a result, I dismiss the tenant's monetary claim in its entirety.

### Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,740.00** comprised of \$1,090.00 rent owed; \$2,400.00 overholding; \$1,200.00 additional losses and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,040.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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 21, 2015

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Residential Tenancy Branch

