



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF  
For the tenants: CNR OLC ERP RP PSF RR O

### 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 unpaid rent or utilities, for authorization to keep all or part of the security deposit, for a monetary order 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 tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for an order directing the landlords to make emergency repairs for health or safety reasons, for an order directing the landlords to make regular repairs to the unit, site or property, for an order directing the landlord to provide services or facilities required by law, for an order authorizing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided and “other” although no details of “other” were provided in the tenants’ application other than the remedies described above.

On September 1, 2015 an agent for the landlord (the “agent”), and tenant R.T. attended the hearing, and the hearing was adjourned as the tenant claimed that his wife was in surgery. An Interim Decision dated September 1, 2015 ordered the tenants to fax in proof from the hospital that the female tenant was undergoing surgery on September 1, 2015, which the tenants failed to comply with. Neither tenant attended the reconvened hearing scheduled for November 4, 2015, nor did the tenants comply with my orders as set out in my Interim Decision dated September 1, 2015. As a result, after the 10 minute waiting period, the tenants’ application was dismissed in full, without liberty to reapply as the tenants failed to attend to present the merits of their application and the agent for the landlord did attend and was ready to proceed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the agent, and the agent was given an opportunity was given to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present the landlord's relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The evidence relevant to the issues and findings in this matter are described in this Decision.

Based on the undisputed testimony of the agent, I find the tenants were sufficiently served with the landlord's Application and documentary evidence.

#### Preliminary and Procedural Matter

The agent testified that in addition to the rent owed for July and August of 2015, the tenants have subsequently not paid the rent for September, October or November of 2015 comprised of \$1,500 for each month. As a result, the agent requested to amend the landlord's application to include rent owing for September, October and November of 2015. The agent also stated that the tenants continue to occupy the rental unit. As this request to amend the application does not prejudice the respondent tenants as I find the tenants would be aware or should be aware that rent is due pursuant to the tenancy agreement, I amend the application to \$7,500 comprised of \$1,500 owing for each of the months from July to November 2015, inclusive, pursuant to section 64(3) of 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?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 1, 2014 and reverted to a month to month tenancy after June 30, 2015. Monthly rent in the amount of \$1,500 was due on the first day of each month. The tenants paid a security deposit of \$750 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim is as follows:

Item Description	Amount
1. Unpaid July 2015 rent	\$1,500
2. Unpaid August 2015 rent	\$1,500
3. Unpaid September 2015 rent	\$1,500
4. Unpaid October 2015 rent	\$1,500
5. Unpaid November 2015 rent	\$1,500
<b>TOTAL</b>	<b>\$7,500</b>

The agent provided testimony in support of the landlord's monetary claim. The agent testified that the tenants continue to occupy the rental unit and have not paid rent since June 2015 and owe rent for the months of July to November 2015, inclusive.

The agent testified that a 10 Day Notice dated July 25, 2015, was served on the tenants on July 25, 2015 by posting the 10 Day Notice to the tenants' door. Although the tenants disputed the 10 Day Notice, as indicated above, the tenants' application was dismissed, without leave to reapply, as the tenants failed to attend the reconvened portion of this hearing.

The agent confirmed that the landlord is still seeking an order of possession as the tenants continue to occupy the rental unit without paying rent.

### Analysis

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

**Order of Possession** - Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy, and the landlord has made a request for an order of possession. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice dated July 25, 2015, was dismissed, I **grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenants.

**Monetary Order** – I accept the undisputed testimony of the agent that the tenants have failed to pay rent as claimed and that the tenants continue to occupy the rental unit. As a result, I find the landlord has met the burden of proof and are entitled to the full amount of their claim, **\$7,500**, as described in the table above.

As the landlord's application had merit, I grant the landlord the recovery of their \$50 filing fee. I find the landlord's total monetary claim established is **\$7,550**.

**I ORDER** the landlord to retain the tenants' full security deposit of \$750 which has accrued no interest, 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 **\$6,800**.

### Conclusion

The tenants' application has been dismissed in full, without leave to reapply.

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

The landlord has established a total monetary claim of \$7,550 and has been ordered to retain the tenants' full security deposit of \$750 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$6,800. 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: November 4, 2015

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Residential Tenancy Branch

