



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MT, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that he cannot recall when, or how, the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted with the Application for Dispute Resolution were served to the Tenants. The female Tenant stated that they found these documents taped to their door, although they cannot recall when they were located. As the Tenants acknowledge finding the documents posted to their door, I find they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenants filed an Application for Dispute Resolution, in which they applied for more time to file an application to cancel a Notice to End Tenancy and for a monetary Order for money owed or compensation for damage or loss.

The female Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted with the Application for Dispute Resolution were personally served to the Landlord on October 23, 2015. The Landlord acknowledged receiving these documents and I find they were served in accordance with section 89 of the *Act*.

On October 21, 2015 the Tenants submitted numerous photographs to the Residential Tenancy Branch. The female Tenant stated that the photographs were never served to the Landlord. She stated that on the morning of December 14, 2015 a memory card with electronic images of those photographs were served to an agent for the Landlord. The Landlord stated that he has not seen those images nor was he advised they had been served to an agent for the Landlord.

The Tenants were advised that the photographs submitted to the Residential Tenancy Branch would not be accepted as evidence as they were not served to the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure. Given that the Landlord has not yet received those images and the Tenants had ample time to serve them to the Landlord, I find it unfair to the Landlord to accept the photographs as evidence.

Upon being advised that the photographs would not be accepted as evidence, the female Tenant stated that they wish to withdraw their application for a monetary Order. I consider this portion of the Tenants' claim to be withdrawn.

On November 30, 2015 the Landlord submitted three pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted to the door of the rental unit on November 30, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a monetary Order for unpaid rent and/or damage?

Should the security deposit be returned to the Tenant or retained by the Landlord?

#### Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began in March of 2015;
- the Tenants agreed to pay monthly rent of \$630.00 by the first day of each month;
- the Tenants paid a security deposit of \$157.50; and
- the Tenants did not pay any rent for October, November, or December of 2015.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated October 02, 2015, was posted on the door of the rental unit on October 02, 2015. The female Tenant stated that the Tenants found this Notice on the door, although she cannot recall when it was located. A copy of this Notice was submitted in evidence.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated November 02, 2015, was posted on the door of the rental unit on November 02, 2015. The female Tenant stated that the Tenants found this Notice on the door on, or about, November 02, 2105. A copy of this Notice was submitted in evidence.

The Landlord is seeking compensation for the cost of repairing a heat detector which is part of the fire alarm system in the residential complex. He stated that he was informed the heat detector was damaged after the fire alarm had been activated and the heat detector is in the ceiling so he presumes it was damaged when the Tenants were moving furniture. He stated that he hired an electrician to repair the heat detector, which cost \$102.00 to repair, although he did not submit a copy of the receipt.

The female Tenant stated that the heat detector was damaged when the Landlord was helping the Tenants replace a closet door. The Landlord stated that he was not present when the item was damaged.

The Tenants are seeking an Order requiring the Landlord to replace the kitchen counter, which the Tenants contend is mouldy.

### Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$630.00 by the first day of each month and that the Tenants have not paid rent for October of November of 2015. As the Tenants are required to pay rent when it is due pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,260.00 in rent to the Landlord for the months of October and November of 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days by providing proper written notice.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on October 02, 2015.

Section 46(2) of the *Act* stipulates that a Ten Day Notice to End Tenancy for Unpaid Rent must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective the Notice to End Tenancy must declare the effective date of the Notice. The Ten Day Notice to End Tenancy that was posted at the rental unit on October 02, 2015, which was submitted in evidence, does not declare when the tenancy ends. I therefore find that this Notice to End Tenancy is not effective, as it does not comply with section 52(c) of the *Act*.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on November 02, 2015, which declared that the Tenants must vacate the rental unit by November 12, 2015.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenants received the Notice to End Tenancy on November 15, 2015.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date the tenant receives the Notice. As the Tenants are deemed to have received this Notice on November 15, 2015 I find that the earliest effective date of the Notice was November 25, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was November 15, 2015.

As the Tenants did not pay rent when it was due; the Tenants were served with a valid Ten Day Notice to End Tenancy, which had an effective date of November 15, 2015; and the rent for October and November remains unpaid, I find the Landlord is entitled to an Order of Possession. As the Landlord is seeking compensation for rent for December of 2015, the Order of Possession will be effective on December 31, 2015.

As the Tenants did not vacate the rental unit on November 15, 2015, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days the Tenants remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between November 15, 2015 and November 30, 2015, I find that the Landlord has been fully compensated for that period.

I also find that the Tenant must pay rent for the month of December, in the amount of \$630.00, as the Order of Possession is not effective until December 31, 2015.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Even if I accepted that the Tenants damaged the heat detector and were responsible for repairing it, I would dismiss the claim for repairing the item because Landlord submitted insufficient evidence to establish it cost \$102.00 to repair the item. In reaching this conclusion, I was strongly influenced by the absence of a receipt/invoice that corroborates the Landlord's statement he paid \$102.00 for the repair. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. I therefore dismiss the Landlord's claim for compensation for repairing the heat detector.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Given that this tenancy is ending at the end of December and it would be unrealistic to expect the counter top to be replaced prior to the end of the tenancy, I dismiss the Tenants' application to replace the counter top.

### Conclusion

I grant the Landlord an Order of Possession that is at 1:00 p.m. on December 31, 2015. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,940.00, which is comprised of \$1,890.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' security deposit of \$157.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,782.50. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and 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: December 14, 2015

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Residential Tenancy Branch

