



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the application of the landlord for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord originally applied for an order of possession for unpaid rent or utilities and for a monetary order unpaid rent or utilities through the Direct Request process.

On October 30, 2015, an Adjudicator wrote an interim decision adjourning the landlord’s original Application for Dispute Resolution submitted through the Direct Request process to a participatory hearing scheduled for January 7, 2016 at 9:30 a.m. Pacific Time as there were two tenancy agreements submitted in evidence; one for each respondent tenant for the same rental unit. The interim decision dated October 30, 2015 should be read in conjunction with this decision.

The agent for the landlord (the “agent”) and the owner of the property (the “owner”) attended the teleconference hearing as scheduled. The hearing process was explained to the agent and owner and they were given an opportunity to ask questions about the hearing process. Thereafter the agent and owner 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.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenants personally at the rental unit on October 29, 2015 with a witness and that the tenants accepted the paperwork and that the tenants continued to occupy the rental unit until November 22, 2015, when the tenants vacated the rental unit. Based on the above, and without any evidence to prove to the contrary, I accept the agent’s

undisputed testimony that the tenants were duly served on October 29, 2015 in accordance with the *Act*.

### Preliminary and Procedural Matters

At the outset of the hearing, the agent testified that the tenants vacated the rental unit on November 22, 2015, since the landlord's application was filed. As a result, the agent requested to withdraw the landlord's request for an order of possession as the tenants have already returned possession of the rental unit by vacating the rental unit on November 22, 2015.

Although the landlord should have applied separately against each tenant as this matter relates to tenants in common and not co-tenants, this was not addressed in the interim decision dated October 30, 2015. As a result, and pursuant to section 64(3)(a) of the *Act* I find that this is a procedural issue that I will resolve as follows. The landlord submitted two tenancy agreements in evidence that support that the tenants were not co-tenants; they were tenants in common. The agent also stated that both tenants owe the same amount of rent and as a result, the agent and owner were advised that if the landlord was entitled to a monetary order against either tenant, each tenant would be named in a separate monetary order as the tenants were tenants in common. Each tenant occupied the rental unit pursuant to a separate tenancy agreement signed on different dates for the same rental unit. The agent stated that the tenants in common also knew each other.

In addition to the above, the agent testified that in addition to the unpaid rent for August, September and October of 2015 as originally claimed in the Direct Request application, the tenants have subsequently not paid any rent for November 2015 and as a result, the landlord suffered a loss of November 2015 rent of \$350.00 per tenant for a total of \$700.00 more loss of rent. As a result, the agent requested to amend the application to include loss of rent for November 2015 also. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would know or ought to know that rent is due pursuant to the tenancy agreement on the first day of each month. Therefore, I amend the landlord's application to include loss of November 2015 rent pursuant to section 64(3) of the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order against both tenants in common 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

A copy of the tenancy agreements for each of the tenants were submitted in evidence. For tenant G.W. a month to month tenancy began on June 21, 2015 with a monthly rent amount of \$350.00 due on the first day of each month. For tenant A.S. a month to month tenancy agreement began on June 1, 2015 and although the amount of rent is listed as \$700.00, the agent stated that she made an error and the amount should have read \$350.00 due on the first day of each month. The combined total of rent from each tenant in common is \$700.00 per month.

The agent stated that the tenants did not dispute the 10 Day Notice dated September 12, 2015, and failed to vacate the rental unit by the effective date listed on the 10 Day Notice, which was September 22, 2015. The tenants did not vacate the rental unit until November 22, 2015. The landlord is seeking unpaid rent of \$350.00 from each tenant for a total monthly amount of \$700.00 combined for the months of August, September, October and November of 2015 for a total of \$1,400.00 for tenant G.W. and \$1,400.00 for tenant A.S. The landlord is also seeking the recovery of the cost of the filing fee of \$50.00 by way of \$25.00 from each tenant for a total monetary claim against each tenant in common of \$1,425.00. The landlord has not claimed towards the security deposit of either tenant.

### Analysis

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

**Unpaid rent/loss of rent** – Section 26 of the *Act* requires that each of the tenants in common pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I accept the undisputed testimony of the agent and owner, and I find that both tenant G.W. and A.S. breached section 26 of the *Act* by failing to pay \$350.00 each in rent for the months of August, September, and October of 2015 and that the landlord also suffered a loss of rent of \$350.00 from each tenant for the month of November 2015. As a result of the above, I find the landlord has met the burden of proof by establishing a monetary claim of \$1,400.00 against tenants in common G.W. and A.S.

As the landlord's application has merit, I find the landlord is entitled to the recovery of the filing fee of **\$50.00** comprised of \$25.00 from tenant G.W., and \$25.00 from tenant A.S.

**I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by each tenant in common to the landlord in the amount of **\$1,425.00 each**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$1,425 against tenant A.S. and tenant G.W. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by each tenant in common in the amount of \$1,425.00. The total combined amount of the landlord's total monetary claim is therefore \$2,850.00. Each monetary order must be served on the tenant named 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: January 12, 2016

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Residential Tenancy Branch

