



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC MND MNR MNSD MNSC FF O

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord and one tenant participated in the teleconference hearing. The tenant acknowledged receiving the landlord's application, the notice of hearing and all of the landlord's evidence. The tenant submitted evidence to the Branch but did not serve a copy of his evidence on the landlord. I therefore did not admit the tenant's written submissions. Both parties were given full opportunity to give affirmed testimony and present their admissible and relevant evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

### Background and Evidence

The rental unit is the upper portion of a house. The lower portion is generally occupied by other tenants in a separate tenancy. The tenancy began on or about June 1, 2011. The landlord stated that on October 18, 2015 she served the tenants with a notice to end tenancy for non-payment of rent and a notice to end tenancy for cause, by posting the notices to the rental unit door. The landlord and her husband, as witness, filled out two copies of the Proof of Service of Notice to End Tenancy form, one for each notice. The tenants did not apply to dispute either notice to end tenancy. On December 9, 2015 the tenants signed for the registered mail packages that included most of the landlord's evidence, including copies of the two notices.

### *Landlord's Evidence*

The landlord stated that the tenants had not paid their full rent for several months, and as of October 1, 2015 the tenants owed \$1,850.00 in rent. The landlord stated that monthly rent increased from \$1,100.00 to \$1,130.00 beginning October 1, 2012. The landlord submitted evidence including rent cheques and notes from the tenants in which they indicated that they were deducting some of their rent because the landlord owed them for hydro. The landlord also submitted copies of receipts the landlord issued to the tenants for their payments toward rent for November and December 2015; on both receipts the landlord indicated that the payments were being accepted for use and occupancy only. The landlord stated that the tenants had not paid any rent for January 2016.

### *Tenant's Response*

The tenant stated that there is no written tenancy agreement, and therefore there is no tenancy. The tenant stated that the landlord had improperly required them to put the hydro for the whole house in their name. The tenant stated that they did not receive either of the notices to end tenancy until they received the landlord's registered mail on December 9, 2015. The tenant submitted that the landlord reinstated the tenancy by accepting rent for November and December 2015. The tenant stated that they did not pay rent for January 2016 because the landlord still owes them for hydro.

### Analysis

I have reviewed all evidence and I find that the tenants were in the regular habit of withholding a portion of their rent, to pay for utilities or for other reasons. The tenants did so without authorization from the landlord or an order from the Residential Tenancy Branch.

I am satisfied that at the very latest the tenants received the notices to end tenancy in the landlord's evidence packages on December 9, 2015, and it was clear from the landlord's application that they sought to end the tenancy for unpaid rent and other reasons. Nevertheless, the tenants did not apply to cancel either notice, and they withheld all of January 2016 rent.

The tenant argued that because there was no written tenancy agreement, there was therefore no tenancy. He also argued that the landlord reinstated the tenancy by accepting rent for November and December 2015. Under the Act, a tenancy can exist despite the lack of a written tenancy agreement. I find in this case that there was a

tenancy. I find that the landlord did not reinstate the tenancy by accepting payment for November and December 2015, as the landlord indicated that the amounts were being accepted for use and occupancy only.

Based on the above-noted evidence, I find that the notice to end tenancy for unpaid rent dated October 18, 2015 is valid. I find that the tenancy ended on November 1, 2015, the effective date of the notice. The landlord is therefore entitled to an order of possession. As I am granting an order of possession based on the notice to end tenancy for unpaid rent, it is not necessary for me to consider the notice to end tenancy for cause.

In regard to the landlord's monetary claim, I find that there is insufficient evidence to establish the amount of outstanding rent. The landlord did not provide evidence that the tenants were properly served with a notice of rent increase, and therefore the increase in rent on October 1, 2012 may not be valid. I therefore dismiss this portion of the landlord's claim with leave to reapply.

As the landlord's application for an order of possession was successful, I find that she is entitled to recovery of the filing fee for the cost of her application.

### Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord may withhold from the security deposit the amount of \$50.00, representing recovery of the filing fee for this application.

The remainder of the landlord's monetary claim is dismissed with leave to reapply.

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: January 20, 2016

