



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC OPB MNR MNSD MNDC FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an order of possession based on a 1 Month Notice to End Tenancy for Cause, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain the tenants' security deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing promptly at 9:30 a.m., whereas the tenant, S.M., joined the hearing late after 12 minutes. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord clarified that based on the details of dispute including in her application she was intended to apply for an order of possession based on a mutual agreement to end tenancy which was confirmed in the two file numbers referenced on the cover page of this decision. I find that the landlord's application clearly indicates that the landlord was seeking an order of possession as the tenants failed to vacate the rental unit by October 31, 2015 based on the mutual agreement between the parties, and as result, I amend the landlord's application to including code "OPB" which is to obtain an order of possession due to the tenants breaching an agreement with the landlord. I find the tenants would have known or ought to have known this information based on the details of dispute. This amendment was made pursuant to section 64(3) of the *Act*.

Regarding the landlord's claim for half of August 2015 rent, September 2015 rent, and October 2015 rent, I am unable to consider those portions of the landlord's claim due to the legal principle of *res judicata* as the landlord confirmed that she has already applied for those months in a previous hearing and her claim was dismissed. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

In light of the above, I have not re-heard the matters already dealt with under a previous application. As a result, I am only considering the landlord's request for an order of possession based on the tenants failing to vacate the rental unit as ordered to in the files referenced on the cover page of this decision, plus loss of rent for the months of November and December of 2015, plus January and February of 2016 at \$775.00 per month for a total monetary claim of \$3,100.00.

#### 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*?

### Background and Evidence

The tenancy began in 2014 and monthly rent is \$775.00 and is due on the first day of each month. The tenants paid a security deposit of \$387.50 which the landlord continues to hold.

The landlord testified under oath that the tenants continue to occupy the rental unit and that she has suffered a loss of rent for the months of November 2015, December 2015, January 2016, and February 2016. Later in the hearing, when tenant joined the hearing after 12 minutes, the tenant claimed that they paid rent for all months but February in cash. The landlord vehemently disputed that by stating that earlier in the tenancy the tenants had their rent paid by the Ministry and not in cash. The tenant confirmed that he has submitted no documentary evidence in response to the landlord's claim which clearly indicates that she is seeking a monetary order for unpaid rent.

In a October 21, 2015 decision which was confirmed once the tenants' application for Review Consideration was dismissed, ordered that the tenants vacate the rental unit by October 31, 2015, which the tenants failed to do.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - Based on the two files numbers referenced on the front page of this decision, the tenants had been previously ordered on October 21, 2015 to vacate the rental unit by October 31, 2015. As a result, the tenancy ended on October 31, 2015 and the tenants have been overholding the rental unit since that time. As the tenants failed to comply with that order, I grant the landlord an order of possession **effective two (2) days** after service on the tenants, pursuant to section 55 of the *Act*.

**Loss of rent** - I prefer the evidence of the landlord over that of the tenants as the landlord's testimony was consistent and was reasonable given that earlier payments were made directly from the Ministry and the tenants provided no supporting documentary evidence to prove that rent for any of the months claim had been paid. The tenants submitted no bank statements or other supporting evidence to prove that they had cash to pay the rent. Therefore, I find the landlord has met the burden of proof and is entitled to **\$3,100.00** for loss of November 2015, December 2015, January 2016, and February 2016 rent as the tenants continue to occupy the rental unit.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$50.00**.

Based on the above, the landlord's total monetary claim is \$3,150.00 comprised of \$3,100.00 in loss of rent, plus the recovery of the \$50.00 filing fee.

**I authorize** the landlord to retain the tenants' full security deposit of \$387.50, 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 **\$2,762.50**.

### Conclusion

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 enforced in the Supreme Court of British Columbia. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

The landlord has been authorized to retain the tenants' full security deposit of \$387.50, 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 \$2,762.50 as described above. 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: February 3, 2016

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Residential Tenancy Branch

