



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY, SHAWN SLINGERLAND & COURTNEY DS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes LANDLORD: OPR, MNR, FF  
TENANT: CNR, MNDC, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on February 23, 2016 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on February 13, 2016 in accordance with section 89 of the Act. The Landlord was unsure if they received the Tenants' package but agree to continue the hearing.

### Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Is there a loss or damage to the Tenants and if so are the Tenants entitled to compensation?

### Background and Evidence

This tenancy started on November 15, 2015 as a month to month tenancy. Rent is \$1,600.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$800.00 on November 10, 2015.

The Landlord said that the Tenant did not pay rent of \$800.00 for the time period of November 15, 2015 to December 1, 2015 when it was due and as a result, on December 7, 2015 she delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 7, 2015. The Tenant said they believe that they had use of the rental unit from November 15, 2015 to December 1, 2015 to prepare for the tenancy at no cost. The Tenants have made the rent payments for December, 2015, January 2016 and February 2016 on the first of each month. The rent payments in effect paid the arrears of rent for each month of \$800.00 (originating in November, 2015) and paid \$800.00 of the current month's rent. On February 4, 2016 the Landlord issued another 10 Day Notice for unpaid rent in the amount of \$800.00. The Tenant said the Landlord misled him and his wife who has a disability by not telling them the tenancy started on November 15, 2015 and not December 1, 2015 as they believed. The Tenant said they do not owe the rent of \$800.00 for November 15, 2015 to December 1, 2015.

The Landlord said they want to end the tenancy on May 1, 2016 if the Landlords are successful in their application.

The Tenant said they are also claiming \$90.00 from a previous decision from January 19, 2016. The Tenant said in that decision they were awarded \$40.00 for cleaning and the \$50.00 filing fee. The decision says the Tenants are to deduct \$90.00 from a future rent payment.

The Tenant said in closing that the Agent for the Landlord has misled them and they should not have to pay for the November 15 to December 1, 2015 rent of \$800.00. As well the owner of the unit has repeatedly tried to overcharge them for utilities. Further they believe the Landlord and Agent have mistreated the Tenants and took advantage of a person with a disability.

The Landlord's Agent said in closing she took extra time to make sure the Tenants understood the contract and the terms of the tenancy and she did not mislead or take advantage of the Tenants. The Agent said she is seeking compensation for unpaid rent under the tenancy contract and to end the tenancy as of May 1, 2016.

### Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I have reviewed the evidence and testimony of both the Landlords and Tenants and I will rely on the tenancy agreement signed November 10, 2015, by both Tenants and the Landlords' Agent. That contract says the tenancy starts on November 15, 2015 and therefore rent is due as of November 15, 2015 unless there is corroborative evidence to state something different. I have found no corroborative evidence to contradict the tenancy agreement.

I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenants application as they agree the November 15, 2015 to December 1, 2015 rent is unpaid.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$800.00 for February, 2016 that originated in November 2015. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$800.00. As well since the Landlord has been successful in this matter I also order the Landlord to recover the filing fee of \$100.00 for this proceeding from the Tenants. Further as the Tenants have a previous uncollected award of \$90.00; I order the Landlord to deduct this amount from the unpaid rent owing. A monetary claim in the amount of \$900.00 less \$90.00 in the amount of \$810.00 is awarded to the Landlord.

Further section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things or is unsuccessful in disputing the Notice to End Tenancy, then under section 46(5) of the Act, the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on February 7, 2016. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 12, 2016. The Tenants have applied to dispute the Notice to End Tenancy with in the time limits, but the Tenants have been unsuccessful. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect May 1, 2016 at 1:00 p.m.

### Conclusion

An Order of Possession effective May 1, 2016 and a Monetary Order in the amount of \$810.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply and the Tenants are ordered to bear the cost of \$100.00 for their application which they have already paid.

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: April 05, 2016

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Residential Tenancy Branch