



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRAFALGAR MANAGMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants both confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenants did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

### Preliminary Issue(s)

During the hearing the landlords' agent withdrew two portions of the monetary claim regarding damages and cleaning costs as the tenancy has not yet ended and that these claims are premature. As such, these portions of the landlord's application are dismissed with leave to reapply.

At the end of the hearing the tenant, T.P. stated that she was still receiving mail through the listed dispute address. The tenant, A.A. provided a new mailing address. All parties

were notified that the tenant, A.A.'s mailing address would be updated for the Residential Tenancy Branch File.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 12, 2016 on a fixed term tenancy ending on July 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated January 12, 2016. The monthly rent is \$1,400.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$700.00 was paid on January 11, 2016.

On March 14, 2016, the landlord served the tenant with the 1 Month Notice dated March 14, 2016 by posting it to the rental unit door. The 1 Month Notice displays an effective end of tenancy date of April 17, 2016 and sets out that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent, T.W. also confirmed that the effective end of tenancy date was incorrectly stated as April 17, 2016 when it should have been April 30, 2016. Both parties were advised during the hearing that the effective end of tenancy date would be corrected to reflect this and that this correction would not invalidate the 1 Month Notice.

During the hearing the tenant, T.P. clarified that she had complied with the 1 Month Notice dated March 14, 2016 and had vacated the rental unit on March 30, 2016. The tenant, A.A. stated that he had also vacated the rental unit on March 30, 2016, but had moved back in after a dispute over the return of the security deposit on March 30, 2016. The tenant, A.A. stated that he was still in possession of the rental unit. The tenant, A.A. later clarified that he had just vacated the rental unit on June 1, 2016 without any notice to the landlord.

The landlord also seeks a monetary claim of \$2,007.00 which consists of:

\$607.00	Unpaid Rent, April 2016
\$1,400.00	Unpaid Rent, May 2016

The landlord clarified that the tenant, A.A. had made a partial rent payment of \$793.00 for April 2016, but has not paid any rent since as of the date of this hearing.

The tenant, A.A. confirmed in his direct testimony that he had only paid \$793.00 for April 2016 and that no further rent payments have been made.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed in their affirmed testimony that the landlord served the tenants with the 1 Month Notice dated March 14, 2016 by posting it to the rental unit door on March 14, 2016.

The tenants have not made application pursuant to subsection 47(4) of the Act within ten days of receiving the 1 Month Notice. In accordance with subsection 47(5) of the Act, the tenants' failure to take this action within ten days led to the end of their tenancy on the effective date of the notice. The tenants are conclusively presumed to have accepted that the tenancy ended on the effective date and must vacate the rental unit on that date. In this case, this required the tenants to vacate the premises by April 30, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

As for the landlord's monetary claim, I also find based upon the undisputed evidence of both parties that the tenant, A.A. was still in possession of the rental unit as of June 1, 2016 and that only a partial rent payment of \$793.00 was made for April 2016 and none for May 2016. The landlord has established a claim for unpaid rent/loss of \$2,007.00.

The landlord applied to keep the tenant's \$700.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,735.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid April 2016 Rent	\$607.00
Unpaid May 2016 Rent	1,400.00
Offset Security Deposit	-700.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,407.00</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: June 02, 2016

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Residential Tenancy Branch