



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EY PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord: OPR MNR MNSD FF  
For the tenants: CNR MNDC OLC RP RR FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain the tenants’ security deposit and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2016 (the “10 Day Notice”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for an order for repairs to the unit, site or property, for a rent reduction for services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenants, two agents for the landlord (the “agents”) and a caretaker for the landlord attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties 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. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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

### Preliminary and Procedural Matters

The parties agreed that the agent, A.O. should be listed as an agent for landlord and as a result and pursuant to section 64(3) of the *Act*, the tenants' Application was amended accordingly.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and to recover the cost of the filing fee at this proceeding. The balance of the tenants' application is **dismissed, with leave to re-apply**.

At the outset of the hearing, tenant A.B. requested an adjournment to allow for more time to prepare for the proceeding. Rule 7.8 of the Rules of Procedure sets out the criteria to be considered for adjournments. After carefully considering the criteria I find there would be greater prejudice to the landlord by adjourning the hearing as the rental unit remains occupied and the tenants did not deny that rent for July has not been paid. Therefore, tenant A.B.'s request for an adjournment is denied. The hearing continued as a result.

### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- 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?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on February 1, 2016 and is scheduled to revert to a month to month tenancy after January 31, 2017. Monthly rent in the amount of \$1,400.00 is due on the first day of each month. The tenants paid a \$520.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim of \$2,770.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of March 2016 rent	\$545.00
2. Unpaid portion of June 2016 rent	\$800.00
3. NSF fee for returned June 2016 rent cheque	\$25.00
4. Loss of July 2016 rent	\$1,400.00
<b>TOTAL</b>	<b>\$2,770.00</b>

A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice is dated June 3, 2016 and indicates that \$1,345.00 in rent is owed as of June 1, 2016. The effective vacancy date listed on the 10 Day Notice is June 17, 2016. The parties agreed that tenant A.B. moved in as of April 2016. The tenants divided the monthly rent as follows; Tenant A.B. paid \$600.00 of the \$1,400.00 monthly rent while tenant D.G. paid the remaining \$800.00.

Tenant D.G. disputed the unpaid portion of March 2016 rent by stating that another tenant was supposed to move in and did not and that this occurred before tenant A.B. moved into the rental unit in April 2016. The agent stated that tenant D.G. was aggressive with the other tenant who did not move into the rental unit as a result and found another rental unit due to tenant D.G. being aggressive. The agent stated that \$545.00 is owing from tenant D.G.'s March 2016 rent and that the amount was reduced to that amount due to some work provided to the landlord during the tenancy.

Tenant D.G. confirmed that his \$800.00 rent cheque for June 2016 was returned as NSF (non-sufficient funds). The landlord has claimed a \$25.00 fee plus the unpaid amount of June 2016 rent of \$800.00. The landlord is seeking loss of rent of \$1,400.00 for July 2016 as the rental unit continues to be occupied beyond the June 17, 2016 effective date of the 10 Day Notice. The tenants disputed the 10 Day Notice three days after it was served on June 3, 2016.

### Analysis

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

**10 Day Notice** – Firstly, I find the tenants have provided insufficient evidence to support that rent for March, June and July 2016 have been paid in full. The onus of proof is on

the tenants to prove that they did pay rent when they apply to dispute a 10 Day Notice. Furthermore, section 26 of the *Act* requires that rent be paid on the day that it is due in accordance with the tenancy agreement, and tenant D.G. confirmed that no rent has been paid for June 2016 and both tenants confirmed that no rent was paid for July 2016 yet the rental unit continues to be occupied. As a result, **I dismiss** the tenants' application to cancel the 10 Day Notice and I find the 10 Day Notice to be valid and it is upheld.

**Order of Possession** – The effective vacancy date of the 10 Day Notice was June 17, 2016 which has passed and the rental unit continues to be occupied by at least one tenant. Section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Based on the above, I grant the landlord an order of possession effective two (2) days after service on the tenants.

**Claim for unpaid rent and loss of rent** – Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The landlords will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$2,770.00** as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

**Monetary Order** – I find the landlord has established a total monetary claim of **\$2,870.00** comprised of \$2,770.00 in unpaid rent, loss of rent and a \$25.00 NSF fee, plus the recovery of the cost of the \$100.00 filing fee.

**I authorize** the landlord to retain the tenants' full security deposit of \$520.00 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 **\$2,350.00**.

### Conclusion

The portion of the tenants' application that was not severed under section 2.3 of the Rules of Procedure is dismissed without leave to reapply due to insufficient evidence.

The landlord's application is successful. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$2,870.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$520.00 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 \$2,350.00. 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: July 7, 2016

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Residential Tenancy Branch