



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, RPP, AAT

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to return the tenants' personal property pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenants or the tenant's guests pursuant to section 70.

While the respondent attended the hearing by way of conference call, the applicants did not, although I waited until 0953 in order to enable the applicants to connect with this teleconference hearing scheduled for 0930.

The landlord admitted service of the tenants' dispute resolution package, which she received on or about 15 July 2016.

### Landlord's Late Evidence

The landlord submitted evidence to the Residential Tenancy Branch on 15 July 2016. Pursuant to rule 3.15 of the Residential Tenancy Branch Rules of Procedure, this evidence was received late. I have not considered the evidence.

### Disposition of Portion of Tenants' Claim

In this application, the tenants bear the onus of proving, on a balance of probabilities, that they are entitled to the following aspects of their claim:

- an order requiring the landlord to return the tenants' personal property pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenants or the tenant's guests pursuant to section 70.

Rules 7.1 and 7.3 of the Rules of Procedure establish the consequences of failing to appear at a hearing at the scheduled time:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the applicants and in the absence of the applicants' participation in this hearing, I order the following portions of the tenants' application dismissed without leave to reapply:

- an order requiring the landlord to return the tenants' personal property pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenants or the tenant's guests pursuant to section 70.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

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

This tenancy began on or about 4 February 2016. Monthly rent in the amount of \$1,100.00 is due on the first. The landlord entered into a written tenancy agreement with the tenant BL and another person DM. The landlord continues to hold a security deposit in the amount of \$550.00, which was collected at the beginning of this tenancy.

On 6 June 2016 the landlord served the tenants with the 10 Day Notice by posting that notice to the tenants' door. The 10 Day Notice set out an effective date of 16 June 2016 and set out that the tenants had failed to pay rent in the amount of \$2,200.00 that was due 1 June 2016 (the amount included rent due 1 May 2016 that was in arrears at the time). On 16 June 2016 the tenants applied to dispute the 10 Day Notice.

The tenant TO applied for dispute resolution as agent for the tenant BL. The tenant BL provided a letter of authorization for the tenant TO to act as her agent.

The landlord testified that she received a text message from DM indicating that he has abandoned the rental unit. The landlord testified that she believes the tenant BL has also abandoned the rental unit and has ceased residing in the unit as a result of a criminal law matter. The landlord testified that she believes the tenant BL abandoned the rental unit in May. The landlord testified that to the best of her knowledge, no one is residing in the rental unit.

The landlord testified that the last month she received rent for the rental unit was April 2016. The landlord testified that the tenants are in arrears. The landlord testified that the strata corporation has administered \$2,000.00 in fines against the unit.

The landlord testified that the strata corporation has terminated fob access to all fobs associated with the rental unit—including the landlord's. The landlord testified that she no longer has access to the rental unit.

### Analysis

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree in writing; or
- the tenant abandons the rental unit.

There is no definition or legislative guidance in the Act of when a tenant has abandoned a rental unit.

The *Residential Tenancy Regulation* (the Regulation) provides guidance on when personal property is considered to be abandoned:

- 24(1) A landlord may consider that a tenant has abandoned personal property if ...
  - (b) subject to subsection (2), the tenant leaves the personal property on residential property
    - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
    - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
  - (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or ...

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act.

I find the Regulation provides guidance as to the types of factors that an arbitrator should consider in determining whether a rental unit has been abandoned. In particular, I should consider whether the tenant appears to be occupying the rental unit, whether the tenant has paid rent, whether the tenant has removed substantially all of his or her personal property, and the express intentions of the tenant.

On the basis of DM's declaration that he had abandoned the rental unit, that the tenant BL is no longer occupying the rental unit, and that the tenants have not paid rent for May, June or July, I find that the tenants have abandoned the rental unit.

As the tenants have abandoned the rental unit, I find that the tenancy ended pursuant to paragraph 44(1)(d) of the Act.

As possession of the rental unit has returned to the landlord, there is no need for me to consider the validity of the 10 Day Notice as the issue is moot.

The landlord may find the following of use:

- sections 24 to 26 of the *Residential Tenancy Regulations*;
- sections 38 and 39 of the Act;
- subsection 60(3) of the Act; and
- Residential Tenancy Policy Guideline 17.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The rental unit is abandoned.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 18, 2016

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Residential Tenancy Branch