



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, OPQ, MNR, MND, MNDC, MNSD, O, FF

### Introduction

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

- an order of possession for cause and because the tenants do not qualify for subsidized housing, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The "first hearing" on July 14, 2016 lasted approximately 60 minutes and the "second hearing" on July 29, 2016 lasted approximately 27 minutes.

"Tenant DE" did not attend both hearings. Tenant AF and her agent LT (collectively "tenant") attended the first hearing only. Landlord HNB attended both hearings, landlord CS attended the second hearing only and both landlords' agent HB attended both hearings (collectively "landlords"). All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness GG attended the second hearing only and gave testimony on behalf of the landlords. The tenant and the landlords confirmed that their agents had permission to speak on their behalf.

### Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on July 14, 2016 was adjourned because the tenants did not have sufficient time to respond to the landlords' application, as it was served late. At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in

accordance with specific deadlines. I issued an interim decision adjourning the first hearing and outlining these specific instructions.

At the first hearing, the tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application.

The landlords confirmed that they did not serve tenant DE with the landlords' application for dispute resolution hearing package, as he had likely vacated the rental unit. The tenant confirmed at the first hearing that tenant DE had vacated the rental unit. As per section 59(3) of the *Act*, I find that tenant DE was not served with the landlords' application and I find that this decision and the accompanying monetary order are not effective against tenant DE. The order of possession is effective against tenant DE, as it includes all other occupants if they are present in the rental unit.

At the first hearing, the tenant confirmed that she did not serve any written evidence on the landlords. At the second hearing, the landlords confirmed that they did not receive any written evidence from the tenants after the first hearing.

The landlords and witness GG testified that the tenant was personally served with the landlords' written evidence package, including 13 photographs, insurance documents, bylaw letters and a monetary breakdown summary, on July 15, 2016. I directed the landlords to serve the above evidence to the tenants after the first hearing, as per my interim decision, since I found that the landlords had not served the tenants prior to the first hearing. I received most of the above documents prior to the first hearing and a copy of the monetary breakdown summary and the 13 labelled photographs after the first hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlords' written evidence on July 15, 2016. I considered the above evidence in my decision as I find it was properly served on the tenant in accordance with the directions in my interim decision.

The landlords confirmed that the tenant was not served with the landlords' written evidence following an inspection on July 26, 2016, which I received at the Residential Tenancy Branch ("RTB") on July 27, 2016. I advised the landlords that I could not consider this evidence in my decision because it was not served on the other party as required by the RTB *Rules of Procedure*.

The landlords confirmed that they served both tenants with a 1 Month Notice to End Tenancy for Cause, dated May 22, 2016 ("1 Month Notice"), on the same date by way of posting to their rental unit door. The tenant confirmed receipt of the 1 Month Notice

during the first hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 1 Month Notice on May 25, 2016, three days after its posting.

At the outset of the second hearing, the landlords confirmed that they had applied for an order of possession because the tenants do not qualify for subsidized housing and “other” unspecified remedies, in error. Accordingly, these portions of the landlords’ application are dismissed without leave to reapply.

### Issues to be Decided

Are the landlords entitled to an order of possession for cause?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenant’s security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlords testified regarding the following facts. They assumed this tenancy when they purchased the rental at the end of March 2016. They do not know when this month-to-month tenancy began but the tenant was already living in the rental unit as of March 2016. No new written tenancy agreement was signed with the tenant when they purchased the rental unit. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$675.00 was received from the former landlord for this tenancy and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit, which is a house.

The landlords’ 1 Month Notice indicates an effective move-out date of July 1, 2016. The landlords issued the notice for the following reasons:

- 1) *Tenant has allowed an unreasonable number of occupants in the unit/site;*
- 2) *Tenant or a person permitted on the property by the tenant has:*
  - a. *put the landlord’s property at significant risk;*
- 3) *Tenant has engaged in illegal activity that has, or is likely to:*
  - a. *damage the landlord’s property;*
- 4) *Tenant has caused extraordinary damage to the unit/site or property/park;*
- 5) *Tenant has not done required repairs of damage to the unit/site;*

- 6) *Tenant has assigned or sublet the rental unit/site without landlord's written consent;*
- 7) *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The landlords confirmed that they did not have any evidence to provide regarding the above reasons, with the exception of #1, 2 and 4. The landlords explained that the tenant has allowed seven to eight people at the rental unit but they have no proof that they are occupants, only visitors of the unit. The landlords maintained that the tenant has caused damage and put the rental unit at significant risk by storing garbage and an excessive number of items both inside and outside the rental unit. The landlords said that the tenant has broken multiple windows and the drywall at the rental unit. The landlords provided photographs, which they said were taken on May 20, 2016. The landlords and witness GG testified that since the 1 Month Notice was issued, the tenants have not cleaned up the property and they recently inspected on July 15 and 26, 2016, and the property was in the same state.

The landlords seek a monetary order of \$1,200.00 for unpaid rent for July 2016, saying that the tenant had not paid it. The landlords claimed that the tenant has caused damage at the rental unit totalling \$4,000.00 but they do not know the full extent of the damage because the tenant has not yet vacated.

The landlords are also seeking to recover the \$100.00 filing fee paid for this Application from the tenant.

### Analysis

Based on the landlords' undisputed testimony at this hearing and on a balance of probabilities, I am satisfied that the landlords issued the 1 Month Notice for a valid reason. I find that the tenant put the landlords' property at significant risk by storing garbage and an excessive number of items all over the property, both inside and outside the rental unit, as well as breaking multiple windows at the rental unit. These are safety and fire hazards, for the property, the tenant and surrounding neighbours. The landlords provided photographs to support their evidence. The tenants have failed to clean or repair the above issues and this has been ongoing since the 1 Month Notice was issued and most recently on July 26, 2016.

As I have found that one reason on the 1 Month Notice is valid, I do not need to examine the other reasons.

The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to dispute the notice within ten days led to the end of this tenancy on July 1, 2016, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by July 1, 2016. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$1,200.00 for July 2016. Therefore, I find that the landlords are entitled to \$1,200.00 in rental arrears from the tenant.

I find that the landlords' application for damage to the rental unit is premature, as the landlords do not know the full extent of the damage since the tenant has not yet vacated. Accordingly, the landlords' application for 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 is dismissed with leave to reapply. As the landlords were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security deposit totaling \$675.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$675.00 in partial satisfaction of the monetary award.

### Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain the tenant's entire security deposit of \$675.00.

I issue a monetary order in the landlords' favour in the amount of \$625.00 against the tenant only, not tenant DE. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' application for 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, is dismissed with leave to reapply.

The landlords' application for an order of possession because the tenants do not qualify for subsidized housing and "other" unspecified remedies, is dismissed without leave to reapply.

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: July 29, 2016

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Residential Tenancy Branch