



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes AS, CNL, EPR, LRE, MNDC, MNR, MNSD, OLC, RP, RR, OPL, OPM, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession based on a mutual agreement to end tenancy;
2. For an order of possession based on a 2 Month Notice to End Tenancy;
3. For an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
4. For a monetary order for unpaid rent;
5. To keep all or part of the security deposit; and
6. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 2 Month Notice to End Tenancy;
2. To be allowed to assign or sublet because the landlord's permission has been unreasonably withheld;
3. To have the landlord make emergency repairs;
4. To suspend or set conditions of the landlord's right to enter the rental unit;
5. For a monetary order for money owed or compensation under the Act;
6. I want compensation for the cost of emergency repairs I already made;
7. To have the landlord comply with the Act;
8. To reduce rent for repairs, services or facilities agreed upon but not provided;
9. To return all or part of the security deposit; and
10. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matter

In the respective applications the name of the male tenant is written differently as neither party provided clarification, I find it appropriate to include both version of the spelling in the style of cause.

At the outset of the hearing the tenants requested an adjournment because they were unable to comply with the Residential Tenancy Branch Rules of Procedures (the "Rules"), by filing their evidence at least 14 days before the hearing. The tenants indicated an error was made by the Residential Tenancy Branch (RTB) when processing their application.

I accept the RTB made an error when processing the tenants' online application, which was filed on July 4, 2016, and the hearing documents were not available until August 2, 2016. However, under the Rules, the tenants were required to submit to the extent possible copies of all document and digital evidence to be relied upon at the hearing directly to the RTB or through a Service BC office **within three business day** of submitting the online Application for Dispute Resolution. I find the tenants' did not comply with the Rule 2.5 by submitting their evidence to the RTB within three business days to the extent possible.

Further, in this case the tenants have not submitted any evidence to the RTB or the landlord in support of the application. Although they may have been unable to serve the evidence at least 14 days before the hearing on the landlord as the hearing documents were not available until August 2, 2016. The tenants were still required to file and serve their evidence as soon as possible as it is the Arbitrator discretion to determine whether to accept evidence that does not meet the certeria of the Rules. Simply not attempting to comply with the Rules is not grounds for an adjournment.

Further, the landlord's application for dispute resolution was filed on July 5, 2016 and was sent by registered mail on July 13, 2016, to the tenants. The Canada post track history shows the tenant RA, accepted the packages on July 29 2016. Filed in evidence is a copy of the Canada post tracking number.

I find the tenants had the appropriate amount of time necessary to submit all relevant evidence in compliance with the Rules by providing their evidence in response to the landlord's application no later than seven day before the hearing. The tenants filed no evidence in response.

Therefore, I deny the tenants request for an adjournment as I find it would be unfair and prejudicial to the landlord as the landlord is seeking an order of possession of the rental unit and monetary order for unpaid rent.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the Notice to End Tenancy. The balance of the tenants' applications are dismissed, with leave to reapply.

#### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary or for unpaid rent?

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

Should the 2 Month Notice to End tenancy be cancelled?

#### Background and Evidence

The parties entered into a fixed term tenancy agreement, which began July 15, 2015, and was to expire on June 30, 2016. At the end of the fixed length of time the tenancy may continue on a month-to-month basis or another fixed term agreement. Rent in the amount of \$3,800.00 was payable of the first of the month. A security deposit of \$1,650.00 was paid by the tenants.

The landlord's agent testified that the tenant RD agreed to end the tenancy by mutual agreement effective June 30, 2016. The agent stated that RD also waived their rights against the landlord for the rental premises regarding any previous disputes or issue of maintenance or repair of the premises. The agent stated that the tenants received one month free rent for June 2016 and the landlord waived unpaid rent for November 2015, March 2016 and May 2016. Filed in evidence is a copy of the mutual agreement to end a tenancy.

The landlord's agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued because the tenant had not signed the mutual agreement at the time it was issued.

The landlord's agent testified that the male tenant AS has not vacated the rental as required by the mutual agreement and has not paid any rent for July 2016 and August 2016.

The tenant RD testified that they entered into a mutual agreement to end the tenancy with the landlord and vacated the premises. RD stated that they did not have the right to remove the co-tenant's belongings.

The tenant AS testified that they were away working and when they came home they found the co-tenant had vacated the rental unit. AS stated that the landlord did not give them notice to end the tenancy and they were not agreeing to the mutual agreement signed by the co-tenant.

The tenant AS testified that they have not paid any rent for July 2016 and August 2016, because they had no hot water to have a shower and they believe the landlord owes them \$15,000.00 for repairs.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the tenants filed an application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. However, I find it not necessary to consider the notice as the tenancy ended by mutual agreement.

I also find it not necessary to consider the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 10, 2016, as the parties entered into a mutual agreement to end the tenancy on June 30, 2016.

Under section 44(1)(C) of the Act a tenancy ends when the landlord and tenant agree to end the tenancy.

The Residential Tenancy Policy Guideline #13, states;

"Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, **and all tenants must move out, even where**

**the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement.** The tenant who moved out is not responsible for carrying out this new agreement.”

[Reproduced as written]  
[My emphasis added]

In this case, the landlord and tenant RD entered into a mutual agreement to end the tenancy effective June 30, 2016. While I accept the co-tenant did not agree with the mutual agreement to end the tenancy that is an issue between the co-tenants which they should have discussed prior to the mutual agreement being signed. Lack of communication between the tenants is not the fault of the landlord. I find the mutual agreement to end the tenancy binding on the parties, I find the tenancy legally ended for both parties on June 30, 2016. I find the tenant AS is overholding the rental premise.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Further, all monetary issues were settled relating to the tenancy as set out in the mutual agreement. While I accept the co-tenant did not agree with the term that is an issued between the co-tenants; the co-tenant had the right to settle issues relating to the tenancy. I find the terms of the mutual agreement binding on the parties.

I am also satisfied a new tenancy agreement between the remaining co-tenant AS and the landlord was not established as no rent was paid for July 2016 and August 2016 and all previous claims relating to the tenancy were settled by the co-tenant. The tenant AS cannot unilaterally create their own tenancy agreement.

I am also satisfied and landlord has suffered a loss of rent as a result of the co-tenant overholding the premises. I find the landlord is entitled to recover occupancy rent for July 2016 and August 2016 in the amount of **\$7,600.00**

I find that the landlord has established a total monetary claim of **\$7,700.00** comprised of unpaid occupancy rent for July 2016 and August 2016 and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$1,650.00** in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$6,050.00**.

At the conclusion of the hearing the landlord and co-tenant RD, agreed that the monetary order for unpaid rent are the responsibility of the co-tenant AS, as RD vacated the premises.

Although the co-tenants can be held jointly responsible for debts and damages relating to the tenancy, I find it not unreasonable to issue the monetary order and an order of possession in the co-tenant AS name, as they are the only tenant overholding the premises.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenancy legally ended by mutual agreement on June 30, 2016. All monetary issue were mutually agreed upon in the settlement agreement up to June 30, 2016.

The co-tenant AS did not establish a new tenancy, a tenant cannot unilaterally create a new agreement.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. The landlord is granted a monetary order for the balance due. Both the above orders will be in the name of AS.

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: August 17, 2016

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Residential Tenancy Branch