



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR MNR FF  
Tenant: MT CNR MNDC ERP RP FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord submitted an Application for Dispute Resolution by Direct Request to the Residential Tenancy Branch on July 12, 2016 (the “Landlord’s Application”). However, the matter was subsequently set for a participatory hearing on today’s date.

The Landlord applied for the following relief pursuant to the *Act*: an order of possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities; and an order granting recovery of the filing fee.

The Tenants’ Application was received at the Residential Tenancy Branch on July 21, 2016 (the “Tenants’ Application”).

The Tenants applied for the following relief pursuant to the *Act*: an order allowing more time to make an application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 4, 2016 (the “10 Day Notice”); an order cancelling the 10 Day Notice; an order requiring the Landlord to make emergency repairs for health or safety reasons; an order requiring the Landlord to make repairs to the unit, site or property; and an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf. The Tenants were represented at the hearing by L.D. Both provided their solemn affirmation.

The Landlord provided oral testimony that the evidence upon which she intended to rely was served on the Tenants by registered mail. In support, the Landlord provided a copy of a Canada Post Customer Receipt, including a tracking number. I find the Landlord's evidence was duly served on the Tenants.

On behalf of the Tenants, L.D. acknowledged the photographic evidence submitted to the Residential Tenancy Branch was not served on the Landlords. L.D. stated during the hearing she did not think it was necessary as the Landlord had seen the interior of the rental unit. As the Tenants' photographic evidence was not served on the Landlord in accordance with the Residential Tenancy Branch Rules of Procedure, it has not been considered in this Decision.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written 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.

#### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to dismiss the Tenants' monetary claims as these are unrelated to the end of the tenancy. The Tenants are granted leave to reapply for monetary relief at a later date.

Accordingly, this Decision will address only the relief sought in the Landlord's Application, and the Tenants' requests for more time to make an application to cancel a notice to end tenancy, an order cancelling the 10 Day Notice, and recovery of the filing fee.

### Issues to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Is the Landlord entitled to recover the filing fee?

Is the Tenant entitled to more time to make an application to cancel the 10 Day Notice?

Is the Tenant entitled to an order cancelling the 10 Day Notice?

Is the Tenant entitled to recover the filing fee?

### Background and Evidence

#### ***The Landlord's Claims***

A copy of the tenancy agreement was provided with the Landlord's documentary evidence. It confirms a month-to-month tenancy began on September 1, 2015. The parties confirmed rent in the amount of \$1,000.00 per month, plus utilities of \$125.00, is due on the first of each month. According to the tenancy agreement, the Tenants paid a security deposit to the Landlord in the amount of \$500.00 at the beginning of the tenancy.

The Landlord advised that the Tenants have not paid rent or utilities in full since July 1, 2016, although they continue to occupy the rental unit. The Landlord provided with her documentary evidence a copy of the 10 Day Notice. The Landlord's written submissions indicate the 10 Day Notice was served on the Tenants in person on July 4, 2016. This is supported in the Tenants' Application form.

According to the Landlord, the amount of rent and utilities currently outstanding is \$2,875.00, which is comprised of \$3,000.00 for rent and \$375.00 for utilities, less a partial payment of \$500.00, received from the Tenants on July 5, 2016.

In reply, L.D. agreed with the amount owing to the Landlord for rent and utilities. However, she stated the Tenants do not intend to pay this amount to the Landlord. The reasons given were because repairs are needed in the rental unit, and because the Tenants need to save money to pay moving expenses. The Tenant also alluded to an alleged assault of her 4-month-old child.

### ***The Tenants' Claims***

The Tenants seeks an order granting more time to make an application to cancel a notice to end tenancy, and an order cancelling the 10 Day Notice. The Tenants also seek recovery of the filing fee.

When provided with an opportunity to provide oral testimony regarding the need for more time to make an application, L.D. stated she didn't really understand. L.D. became upset. No further testimony was offered in relation to the Tenants' request for more time.

When asked to provide a reason the 10 Day Notice should be cancelled, L.D. referred only to the repairs needed within the rental unit, disagreements with the Landlord, and the alleged assault of her 4-month-old child.

### **Analysis**

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

### ***The Landlord's Claims***

Pursuant to section 46 of the *Act*, a tenant who receives a notice to end tenancy for unpaid rent or utilities and wishes to dispute it has 5 days to either pay rent or file an application for dispute resolution. Failing to do so leads to the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the effective date in the 10 Day Notice was indicated to be July 7, 2016. Section 53 of the *Act* states that an effective date that is earlier than the earliest date permitted under the applicable section is deemed to be the earliest date that complies with the section. Section 46(1) of the *Act* stipulates that the effective date may not be earlier than 10 days after the date the tenant receives the notice. As I have found the Tenants received the 10 Day Notice on July 4, 2016, I find the effective date is deemed to be corrected to July 14, 2016.

In any event, the Tenants did not pay rent or file an application for dispute resolution within 5 days of receipt of the 10 Day Notice. Accordingly, I find the Tenants are conclusively presumed to have accepted the tenancy ended on July 14, 2016.

The Landlord is granted an order of possession, which will be effective one (1) day after it is served on the Tenants.

In addition, section 67 of the *Act* permits me to order a party to pay compensation for damage or loss to the other for failing to comply with the *Act*, the regulations or a tenancy agreement.

I find the Landlord has established a total monetary claim of \$2,500.00 in unpaid rent. Applying the security deposit of \$500.00 in partial satisfaction of unpaid rent, the amount of rent owing is \$2,000.00.

With respect to unpaid utilities, L.D. conceded the Tenants have not paid rent as alleged by the Landlord. As I have ended the tenancy based on the Tenants' failure to respond to the 10 Day Notice within the applicable timeframe, and in light of L.D.'s admission that utilities remain unpaid as claimed by the Landlord, I find it appropriate to grant the Landlord a monetary award in the amount of \$375.00 for unpaid utility charges.

As the Landlord has been successful in her Application, I find she is entitled to recover the \$100.00 filing fee.

In light of the above, the Landlord is granted a monetary order in the amount of \$2,475.00, which is comprised of \$2,000.00 in outstanding rent, \$375.00 in utility charges, and \$100.00 for the filing fee.

### ***Tenant's Claims***

As the Landlord's Application has been successful, it is not necessary for me to consider the Tenants' requests further in this Decision.

### **Conclusion**

The Landlord is granted an order of possession, which will be effective one (1) day after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Further, the Landlord is granted a monetary order in the amount of \$2,475.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 09, 2016

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Residential Tenancy Branch