



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on July 27, 2016 for an Order of Possession and a Monetary Order for: unpaid rent; to keep the Tenants’ security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation, or tenancy agreement; and to recover the filing fee from the Tenants.

The Landlord, the building manager, and both Tenants appeared for the hearing and provided affirmed testimony. The Tenant confirmed personal receipt of the Landlord’s Application and confirmed that he had not provided any evidence prior to this hearing.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the issues to be decided.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenants’ security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The parties agreed that this tenancy started on February 1, 2015 for a fixed term of one year after which the tenancy continued on a month to month basis. A written tenancy agreement was signed by the parties which require the Tenants to pay rent in the amount of \$1,200.00 on the first day of each month. The rent was increased to

\$1,230.00 during the tenancy. The Tenants paid the Landlord a security deposit of \$600.00 which the Landlord still retains.

The Landlord testified that the Tenants were habitually late paying rent. The Landlord served the Tenants with a breach letter in January 2016 and multiple notices to end tenancy for unpaid rent during the tenancy. On July 1, 2016 the Tenants failed to pay rent. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on July 4, 2016. The Notice was provided into evidence and details a vacancy date of July 11, 2016 due to \$1,230.00 due on July 1, 2016. The property manager testified that the Notice was posted to the Tenant's rental unit door with a witness who signed a Proof of Service document to verify this method of service.

The Landlord testified that the Tenant paid the rental arrears for July 2016 outside of the time period allowed by the Notice, namely on July 21, 2016. The Landlord testified that the Tenants were issued with a receipt for that payment which indicated that the payment was being accepted for use and occupancy only.

The Landlord testified that the Tenants paid rent late for August 2016. The Tenants made late payment for August 2016. Again they were issued with a receipt for use and occupancy only. The Landlord testified that the Tenants had not paid any rent for September 2016. As a result, the Landlord now seeks to end the tenancy and recover the unpaid rent for September 2016 in the amount of \$1,230.00.

The male Tenant confirmed receipt of the Notice on July 4, 2016 and confirmed that he had not filed to dispute the Notice. The Tenant did not dispute the Landlord's evidence and that he was in rental arrears for the month of September 2016.

The male Tenant testified that he was struggling to make the rental payment on the first of every month as he only receives funds after the 20<sup>th</sup> day of each month. The Tenant asked the Landlord whether he would give them one more chance or change the date that rent was payable so that he could meet the terms and conditions of the tenancy agreement.

The Landlord considered the Tenant's request and stated that the Tenants had been given multiple chances to make their rent payments on time and that he had heard this promise from the male Tenant before. As a result, the Landlord denied the Tenants' request but stated that he would work with the Tenants to allow them some time to vacate the rental unit.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the tenant has authority to not pay it under the Act. Sections 46(4) and (5) of the Act state that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I am also satisfied that this was served to the Tenants' rental unit door pursuant to Section 88(g) of the Act.

In this case, I accept the Landlord's undisputed evidence that the Tenants have failed to pay September 2016 rent. The Tenants did not dispute the Notice and have not disclosed any authority to withhold rent for September 2016. While the Tenants did pay July 2016 rent outside of the time limit provided by the Act and on the Notice, I find the Landlord did not re-instate the tenancy by accepting payment outside of this time limit. Rather the payment was accepted for use and occupancy only and the Tenants were required to vacate the rental unit pursuant to the vacancy date on the Notice.

As the Tenants failed to dispute the Notice or pay July 2016 rent within the five day time period allowed by the Act and the Notice, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenants are still occupying the rental unit while in rental arrears, the Landlord is entitled to a two day Order of Possession to end the tenancy. This order must be served to the Tenants and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

In relation to the Landlord's monetary claim, I accept the Landlord's undisputed oral and written evidence that the Tenants failed to pay September 2016 rent in the amount of \$1,230.00 which is awarded to the Landlord. As the Landlord has been successful in the Application, I also award the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlord is awarded a total of \$1,330.00.

As the Landlord already holds the Tenants' \$600.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the outstanding balance of \$730.00. This order must be served on the Tenants and

may then be enforced in the Small Claims Division of the Provincial Court as an order of that court.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this Decision. The Tenants may be liable for the costs associated with the enforcement of the orders.

### Conclusion

The Tenants failed to pay rent as required by the Act. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord is allowed to keep the Tenants' security deposit and is granted a Monetary Order for the outstanding balance of \$730.00.

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 14, 2016

---

Residential Tenancy Branch