



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – MT, DRI, CNL, MNDC, OPT, LAT, O

For the landlords – OPL, MNR, MNSD, MNDC, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a Two Month Notice to End Tenancy for landlords use of the property; to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order of Possession for the tenant; for an Order to authorize the tenant to change the locks to the rental unit; and other issues. The landlords applied for Order of Possession for landlords use of the property; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and other issues.

The tenant and landlords attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, this was sent to the tenant by registered mail and the landlords have provided evidence of the tracking numbers and Canada Post tracking information. The tenant testified that she received some evidence from the landlords but not the application or Notice of Hearing and had no idea the landlords had filed an application. When a hearing package is sent by registered mail it is deemed to be served on the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord testified that he has checked Canada Post website and this shows the hearing package was signed for. I checked the Canada post website to confirm this and found that the signature is the same last name as the tenant and that the package was signed for on August 03, 2016. I must therefore conclude that the tenant or a person in her household did sign for the landlords' hearing package. Consequently, 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 issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application for more time to cancel the Notice to End Tenancy and to cancel the Two Month Notice to End Tenancy; I will also deal with the tenant’s application to dispute an additional rent increase; however, I will not deal with the remaining sections of the tenant’s claim at this hearing.

#### Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to dispute a Notice to End Tenancy?
- Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?
- Is the tenant entitled to dispute an additional rent increase?
- Are the landlords entitled to an Order of Possession based on the reason provided on the Two Month Notice to End Tenancy?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

#### Background and Evidence

The parties agreed that the tenant originally moved into the unit on October 01, 2014 under a tenancy agreement with the previous owner and landlord of the property. These landlords purchased the property in June, 2015 and a new tenancy agreement for a month to month tenancy was entered into on June 12, 2015. Rent is \$750.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$350.00 on October 01, 2014 and this is now held in trust by these landlords.

#### **The landlords’ application**

The landlord testified that the tenant was served with a Two Month Notice to End Tenancy on May 23, 2016. This Notice was served personally to the tenant and sent by registered mail. The tenant confirmed receipt of the Notice on May 23, 2016. The landlord testified that the Notice has an effective date of July 31, 2016 and provided one reason to end the tenancy, that the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or the landlord’s spouse. A copy of the Notice has been provided in documentary evidence. The corner of the Notice showing the check mark

was folded over when faxed and I was unable to read this; however, both parties confirmed the reason checked on the Notice.

The landlords testified that they intend for the rental unit to be occupied by their son who is now 19 years old. Their son wishes to have a quiet place to live and study in as he has started at University and currently there are five people living at home which makes it difficult for him to have privacy and to study without any disturbances. The landlords testified that their son had wanted to move into the unit at the end of July but as the tenant has not moved out he is still waiting to move in. The landlords therefore seek an Order of Possession of the rental unit effective as soon as possible.

The landlords testified that the tenant received rent back for July, 2016 as compensation for the Notice. The tenant has failed to pay rent for August or September, 2016 to an amount of \$1,500.00. The landlords seek a Monetary Order to recover the unpaid rent.

The landlords seek an Order to be permitted to keep the security deposit of \$350.00 to offset against the unpaid rent. The landlords testified that there are no further Monetary claims for money owed or compensation for damage or loss at this time.

The tenant disputed the landlords' claim that their son is going to move into the rental unit. The tenant testified that the other upstairs tenants told her that the landlords had said their son was going to move into their unit and when they moved out the landlords' son did not move in and that unit has now been re-rented.

The landlords testified that they did not tell the upper tenants that their unit was going to be used for the landlords' son to live in. The upper tenants were never served a notice to end tenancy and they moved out of their own accord. The upper unit gets a higher rent than the tenant's unit which the landlords' son cannot afford to pay as he is a student. Therefore the upper unit had to be re-rented to help pay the landlords' bills. The lower unit has a more affordable rent for the landlords' son to manage.

The tenant testified that as her tenancy ended on July 31, 2016, disability that were paying her rent would not pay any further rent past that date unless the landlords provided documentation to them that the tenant was still living in the unit. The tenant agreed that no rent has been paid for August or September, 2016.

### **The tenant's application**

The tenant testified that she has no reason why she failed to file her application within 15 days of receiving the Notice to End Tenancy other than she met with the landlords son and thought he was not old enough to rent her unit so she delayed in filing her application and has been unwell.

The tenant disputes that the landlords' son will live in the unit and seeks to have the Notice cancelled.

The tenant testified that the landlords gave her a rent increase of \$100.00 early this year but she has continued to pay the rent as agreed on the tenancy agreement of \$750.00.

The landlords testified that they have not collected a rent increase from the tenant.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's application for an Order of Possession; I find on a balance of probabilities that the reason given on the Notice that the landlords' son will occupy the rental unit is valid. The tenant has provided insufficient reasoning or evidence to show that the landlords' son will not occupy the rental unit. Furthermore, the tenant filed her application late. She was deemed to have been served the Notice on May 23, 2016 in person and therefore had until June 07, 2016 to file her application and did not do so until July 27, 2016. I refer the parties to s. 66(1) of the *Act* which states:

**Director's orders: changing time limits**, and provides in part as follows:

**66** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

The Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part: The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said. Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure

- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Therefore, the tenant has shown insufficient reason to file her application late and does not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. As the tenant has been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 15 days after receiving the Notice I must dismiss the tenant's application to set aside the Notice.

Page two of the Notice also explains this to the tenant and states "If you do not file an application within 15 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of the Notice. The tenant also has the option of ending the tenancy with 10 days' notice.

I therefore find the landlords are entitled to an Order of Possession pursuant to s. 55 of the *Act*. As the effective date of the Notice has since passed I have issued an Order of Possession effective two days after service upon the tenant.

With regard to the landlords' application for a Monetary Order for unpaid rent; the tenant agreed she did owe rent for August and September, 2016 of \$1,500.00. The tenant testified that she could not pay the rent as the landlords would not provide documentation so the tenant could set up her disability payments. I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The Act does not state that the tenant can pass the responsibility for her rent to a third party and it is the tenant's obligation to ensure the rent is paid on the day it is due. I am satisfied that the rent was not paid for August and September and I therefore find in favor of the landlords' claim to recover the amount of **\$1,500.00.**

I Order the landlords to keep the security deposit of **\$350.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent. A Monetary Order has been issued to the landlords pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent for August and September	\$1,500.00
Less security deposit	(-\$350.00)
Total amount due to the landlords	\$1,150.00

With regard to the tenant's application to dispute an additional rent increase. As there is insufficient evidence of a Notice of Rent Increase being issued to the tenant for \$100.00 or evidence to show that the landlords have increased the tenant's rent above the \$750.00 shown on the tenancy agreement I find that this section of the tenant's application has no merit and is dismissed.

#### Conclusion

The tenant's application for more time to file an application to dispute a notice and her application to cancel a Two Month Notice to End Tenancy are dismissed without leave to reapply. The Two Month Notice to End Tenancy dated May 23, 2016 will remain in force and effect.

The tenant's application to dispute an additional rent increase is dismissed.

The reminder of the tenant's application not heard today for an Order of Possession for the tenant and for an Order to authorise the tenant to change the locks to the rental unit are dismissed without leave to reapply as this tenancy will be ending.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **Two days after service upon the tenant**. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,150.00**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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 15, 2016

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Residential Tenancy Branch