



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about February 1, 2016. Rent in the amount of 950.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00. The tenant failed to pay rent in the month(s) of August and August 18, 2016 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of September and October. The landlord testified that he is seeking an order of possession.

The tenants testified to the following. The tenants stated that the tenants below them smoke marijuana on a daily basis. WV testified that she has suffered serious health problems due to her allergy to marijuana. The tenants testified that the landlord has not done anything to address the situation. The tenants testified that they withheld the rent as they need the money to make “an emergency move”. The tenants testified that they did not have the landlords’ written permission to withhold the rent or an order from the Branch allowing them to do so. The tenants request that the monetary portion of their application be “put off” to another time so that they can assemble their evidence.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

### ***Rules about payment and non-payment of rent***

**26** (1) *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.*

I accept the landlord’s undisputed testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and although the tenants did apply for dispute resolution to dispute the notice they concede that they have not paid the rent for the past three months. In addition, they have not provided sufficient evidence to justify withholding the rent. . Based on the above facts I find that the landlord is entitled to an order of possession pursuant to Section 55 of the Act as per his oral request. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, the tenants initiate the dispute resolution process and were fully aware of the timing of this hearing and their claim. The landlord was present and ready to proceed. The tenants stated that they have not had time to gather their evidence and require more time. I deny the tenants request to “put off” the monetary portion of their claim. The tenants did not provide sufficient evidence to support a monetary award and I therefore dismiss that portion of their application.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord is granted an order of possession.

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: October 17, 2016

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Residential Tenancy Branch