



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MND, FF

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The two tenants did not attend this hearing, which lasted approximately 28 minutes. The landlord's agent, BW ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the sole shareholder of the landlord company named in this application and that he had authority to represent it as an agent at this hearing.

The landlord testified that the two tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package on September 21, 2016, both by way of registered mail to the rental unit. The landlord said that the tenants were still living at the rental unit at the time of the mailing. The landlord provided two Canada Post receipts and tracking numbers with this application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on September 26, 2016, five days after their registered mailings.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 6, 2016 ("10 Day Notice") on the same date by way of posting to the rental unit door. The landlord provided a signed,

witnessed proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 10 Day Notice on September 9, 2016, three days after its posting.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began around May 17, 2016. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. The landlord explained that although the landlord's application indicates that rent of \$1,000.00 was due for each month, he intended it to mean that it was \$1,000.00 per tenant per month. No security deposit was paid to the landlord. No written tenancy agreement was signed by the parties, as only a verbal agreement was reached.

The landlord said that he believes the tenants vacated the rental unit but he is unsure when. He said that they probably left by October 2, 2016. He is concerned that the tenants might return to the rental unit because they have entered through the windows before and barricaded themselves inside. He said that he has changed the locks to the unit. The landlord seeks an order of possession on this basis.

The landlord issued the 10 Day Notice indicating that rent of \$1,000.00 was due on August 1, 2016. The landlord indicated initially that he was seeking rent of \$1,000.00 per month for a total of \$5,000.00 from July to November 2016 inclusive. He clarified at the hearing that he was no longer seeking November 2016 rent. He explained that he was seeking an increased rent amount of \$2,000.00 per month for a total of \$8,000.00 from July to October 2016 inclusive. The landlord maintained that the tenants did not pay any rent for the above time period.

The landlord seeks a monetary order of \$8,000.00 for unpaid rent as well as recovery of the \$100.00 filing fee.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on August 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on September 19, 2016, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by September 19, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,000.00 for each month from July to October 2016 inclusive. I find that the landlord is entitled to \$4,000.00 in unpaid rent from the tenants. As the landlord indicated rent of \$1,000.00 was due per month in his application and in the 10 Day Notice, I do not accept that rent was \$1,000.00 per tenant for a total of \$2,000.00 per month for this unit.

As the landlord's application for a monetary order for damage to the rental unit is premature, since the landlord had not taken back possession of the unit at the time of this application, I dismiss this portion of the landlord's application with leave to reapply.

As the landlord was only partially successful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$4,000.00 against the tenants. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for a monetary order for damage to the rental unit is dismissed with leave to reapply.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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: November 17, 2016

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Residential Tenancy Branch