



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenants' application: CNR, MNDC, MNR, MNSD, FF

Landlord's application: OPC, MND, MNDC, MNR, MNSD, FF

### Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord attended with her son. The parties exchanged documents and evidence prior to the hearing. In the tenants' application filed on August 8, 2016, they applied to dispute a 10 day Notice to End Tenancy for unpaid rent and they claimed a monetary award in the amount of \$2,000.00. On September 16, 2016 the tenants submitted a copy of a monetary order worksheet setting out a monetary claim in the amount of \$9,920.00. The items set out in the worksheet included claims for cleaning and repairs, for the return of the security deposit, moving expenses and amounts claimed as compensation for job loss and missed work. The landlord applied for an order of possession and a monetary order. At the hearing landlord referred to a Notice to End Tenancy for cause and to a two month Notice to End Tenancy as well as a 10 day Notice to End Tenancy for unpaid rent. The only Notice to End Tenancy submitted as evidence by either party was a copy of a 10 day Notice to End Tenancy for unpaid rent dated August 3, 2016.

### Preliminary determination

At the hearing the tenant, L.L. said that she was advancing the monetary claims against the landlord, but she also said that she intended to pursue a civil claim in another court. The claims stated by the tenants in the monetary order worksheet have not been properly brought as part of their application. In order to be included in their application the tenants' additional claims should have been set out in the approved form of an: "Amendment to an Application for Dispute Resolution". The form must be separately

filed at the Residential Tenancy Branch and served on the respondent in the same manner as the original application. The tenant did not specify what claims she was planning to bring in another forum and she has not considered jurisdictional issues with respect to her ability to pursue residential tenancy claims in another forum. Because the tenants have not properly applied to claim the monetary awards they wish to pursue against the landlord, the tenants' application for a monetary award is dismissed with leave to reapply. The tenants may reapply or choose to pursue a claim in another forum.

#### Issue(s) to be Decided

Should the Notice to End Tenancy dated August 3, 2016 be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award and if so, in what amount?

#### Background and Evidence

The rental unit is a house in Abbotsford. The tenancy began on August 1, 2015. Monthly rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00 at the start of the tenancy.

The tenants did not pay rent for August 2016 when it was due. The landlord personally served the tenants with a 10 day Notice to End Tenancy on August 3, 2016. The tenants applied to dispute the Notice to End Tenancy, but they did not pay the rent for August and they have not paid rent for September. The tenants testified that they have moved out of the rental unit. They left the keys in the mailbox on September 28, 2016. The tenants said there were only a couple of minor items left at the rental unit that they will pick up in the next day.

The landlord requested an order of possession and a monetary order for unpaid rent for August and September. She did not pursue claims for a pet damage deposit or for repairs to the rental unit. The claim for repairs was premature because the tenancy had not ended when the claim was brought.

#### Analysis

The tenants acknowledged that they have not paid rent for August or for September. The tenant said she intended to pursue a counterclaim against the landlord to be set off against the amount due for rent. As noted above the tenants' application for a monetary award has been dismissed with leave to reapply. The tenants have not provided

evidence of any ground to dispute the 10 day Notice to End Tenancy for unpaid rent and their application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The landlord has requested an order of possession. In the unlikely event that it is needed, I grant the landlord an order of possession effective two days after service of the tenants. This order may be filed in the Supreme Court and enforced as an order of that court.

The landlord is entitled to a monetary award for unpaid rent for August and September in the total amount of \$4,000.00. The landlord is entitled to recover the \$100.00 filing fee for her application, for a total award of \$4,100.00. I order that the landlord retain the tenants' \$1,000.00 security deposit in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$3,100.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord has been granted an order of possession and a monetary order in the amount stated. The tenants' application to cancel the Notice to End Tenancy has been dismissed. The tenants' application for a monetary award has been dismissed with 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: September 29, 2016

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Residential Tenancy Branch

