



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF  
For the tenants: MT CNR

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants applied for more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 9, 2016 (the “10 Day Notice”), and to cancel a 10 Day Notice.

The landlord attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on September 22, 2016 by way of a separate registered mail package for each of the two tenants and addressed to each tenant separately. The landlord provided two registered mail tracking numbers in evidence. The landlord confirmed that the names and addresses on both of the registered mail packages matched the names of the tenants and the rental unit address and that both tenants continue to occupy the rental unit. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The landlord testified that the registered mail packages were both signed for on September 23, 2016. As a result, I find that both tenants were served as of September 23, 2016 which is the date both registered mail packages were signed for by the tenants.

#### Preliminary and Procedural Matter

The landlord testified that in addition to the rent owed for September 2016, the tenants have subsequently not paid the rent for October 2016. As a result, the landlord requested to amend the application to include rent owed for October 2016. The landlord also stated that the tenants continue to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, pursuant to section 64(3)(c) of the *Act*, I amend the application to include loss of rent for October 2016.

#### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 15, 2016. Monthly rent in the amount of \$1,650.00 is due on the first day of each month. The tenants paid a security deposit of \$825.00 at the start of the tenancy, which the landlord continues to hold.

The landlord monetary claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid September 2016 rent	\$1,650.00
2. Loss of October 2016 rent	\$1,650.00
3. Recovery of cost of the filing fee	\$100.00
<b>TOTAL</b>	<b>\$3,400.00</b>

Regarding items 1 and 2, the landlord testified that on September 4, 2016, the landlord personally served the tenants with the 10 Day Notice and that the tenants have not paid rent for September 2016 and have not paid any money for October 2016 and continue to occupy the rental unit.

While the tenants disputed the 10 Day Notice originally, they failed to attend the hearing which I find has the same result as not disputing the 10 Day Notice.

The effective date listed on the 10 Day Notice is September 14, 2016.

### Analysis

Based on the undisputed testimony of the landlord and the unopposed documentary evidence before me, and on the balance of probabilities, I find the following.

**Order of possession** – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy, and the notice to end tenancy complies with section 52 of the *Act*. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice was dismissed, and taking into account that the 10 Day Notice does comply with section 52 of the *Act*, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenants. I find the tenancy ended on September 14, 2016, the effective vacancy date of the 10 Day Notice.

**Monetary claim** – The landlord testified that the tenants failed to pay \$1,650.00 for September 2016 rent, and that the landlord has suffered a loss of October 2016 rent in the amount of \$1,650.00 as the tenants continue to occupy the rental unit. Section 26 of the *Act* requires that the tenants pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I find the tenants have breached section 26 of the *Act* by failing to pay \$1,650.00 for September

2016 rent, and that the landlord has suffered a loss of \$1,650.00 for October 2016. Based on the above, I find the landlord has met the burden of proof and is entitled to **3,300.00** in compensation for unpaid rent and loss of rent as claimed.

I note that as of the date of this hearing, November 1, 2016, a claim for November 2016 loss of rent is premature so the landlord is at liberty to apply for loss of November 2016 rent if the tenants remain in the rental unit as of November 2, 2016.

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the **\$100.00** filing fee.

The landlord continues to hold the tenants' security deposit of \$825.00 which has not accrued interest since the start of the tenancy.

I find that the landlord has established a total monetary claim of **\$3,400.00** as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid September 2016 rent	\$1,650.00
2. Loss of October 2016 rent	\$1,650.00
3. Recovery of cost of the filing fee	\$100.00
<b>TOTAL</b>	<b>\$3,400.00</b>

**I authorize** the landlord to retain the tenants' full security deposit of \$825.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$2,575.00**.

#### Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The landlord's application is successful.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$3,400.00 and has been authorized to retain the tenants' full security deposit of \$825.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$2,575.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 1, 2016

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Residential Tenancy Branch