



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, FF, CNR, MT**

### **Introduction**

This was a cross-application hearing.

On September 18, 2016 the female tenant applied to cancel a Notice ending tenancy for unpaid rent and utilities and for more time to dispute the Notice.

On September 18, 2016 the landlord applied requesting an order of possession based on a 10 day Notice to end tenancy for unpaid rent and utilities issued on September 9, 2016; compensation for an unpaid water bill, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution. The landlord named the two co-tenants as respondents.

The landlord attended the conference call hearing at the scheduled start time.

The landlord said that the Residential Tenancy Branch had been contacted with questions and at that time the landlord was informed the tenants had made an application. The tenants did not serve the landlord with their hearing documents.

The landlord provided affirmed testimony that on September 9, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail to the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service to each tenant.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act.

Neither tenant attended the hearing.

### **Preliminary Matters**

On the same day that the landlord made the application, an amendment was submitted. The landlord also wished to request an order of possession based on a two month Notice ending tenancy for cause that was issued on August 26, 2016. That Notice had an effective date of November 1, 2016. There was no evidence before me that the tenants disputed that Notice. The Notice indicated the landlord required vacant possession of the unit in order to renovate.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

### ***4.2 Amending an application at the hearing***

*In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

The landlord requested that the application be amended to include loss of rent revenue. As rent is the most basic term of a tenancy I determined, pursuant to section 4.2 of the Rules of Procedure, that the application would be amended to include any unpaid per diem rent and rent revenue loss.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent and utilities?

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

May the landlord retain the security deposit paid by the tenants?

#### Background and Evidence

The tenancy commenced on September 1, 2014. Rent is \$1,400.00 due on the first day of each month. The tenants must pay the utility costs. The landlord is holding a security deposit in the sum of \$700.00. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on September 9, 2016 at 6:00 p.m. a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 19, 2016, was served by handing a copy to the female tenant. The landlord submitted a proof of service document signed by both landlords; who were present when service was completed.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,400.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord supplied a copy of a water bill for the rental unit, issued on September 22, 2016 in the sum of \$320.20 and has claimed compensation in that sum. The landlord said the bill is for the tenants' unit only. The tenants have not paid that bill.

The tenants filed an application to dispute the 10 day Notice but failed to attend the hearing in support of their application. The landlord said the tenants were in the unit up until the past weekend and it now appears they may be vacating.

The landlord provided evidence that the two month Notice ending tenancy was given to the tenants on August 26, 2016; by hand to the female tenant and on September 23, 2016, by mail.

### Analysis

From the evidence before me I find that the landlord has issued a two month Notice ending tenancy for landlords' use of the property. That Notice was served personally on August 26, 2016 and again on September 23, 2016 by mail. The Notice had an effective date of November 1, 2016. The tenants would be entitled to compensation in the sum equivalent to one months' rent; often provided though non-payment of the final month of the tenancy. In this case that would mean rent would not be payable in October, 2016.

There was no evidence before me that the tenants paid rent owed in September 2016.

I find that the tenants received the 10 day Notice to end tenancy for unpaid rent on September 9, 2016; the date it was handed to the female tenant.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants received this Notice on September 9, 2016, I find that the earliest effective date of the Notice is September 19, 2016.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on September 19, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant disputed the Notice but failed to attend the hearing in support of that application.

In the circumstances before me I have no evidence that the tenants paid the rent owed for September, 2016. Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; September 19, 2016. Therefore, I find that the tenancy ended before the two month Notice ending tenancy could take effect on November 1, 2016.

I find that the tenants have over-held in the unit beyond the tenancy end date and must then pay per diem rent for each day they occupy the unit.

I find pursuant to section 65(1)(d) of the Act that landlord is entitled to compensation in the sum of \$4,200.00 for unpaid rent to September 19, 2016, per diem rent to the date of this hearing and loss of rent revenue to November 30, 2016. The landlord must obtain possession of the rental unit and will have suffered a loss of revenue for the month of November.

I find that the tenants failed to pay the water utility bill as required by the tenancy agreement. Therefore, I find that the landlord is entitled to compensation in the sum of \$320.20, as set out in the bill supplied as evidence.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$700.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an order of possession that is effective two days after service to the tenants. This order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Based on these determinations I grant the landlord a monetary order for the balance of \$3,920.20. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

The tenants' application to dispute the Notice was made on September 18, 2016; outside of the required five day time-limit. The tenant did not attend the hearing in support of the application. Therefore, I find that the tenants' application is dismissed.

### Conclusion

The landlord is entitled to an order of possession and monetary order based on unpaid rent and utilities.

The tenancy has ended prior to the two month Notice ending tenancy issued on August 26, 2016 came into effect.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

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 14, 2016

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Residential Tenancy Branch