



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$24,000 for unpaid rent and two bylaw infraction assessments.
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant testified the landlord failed to include his and his brother's last name on the Notice to End Tenancy and the Application for Dispute Resolution. With the consent of both parties I ordered that the Notice to End Tenancy and the Application for Dispute Resolution to be amended to include the tenants' last names.

I find that the 10 day Notice to End Tenancy was served on the Tenants by giving it to an adult occupant who apparently resides in the rental unit on September 20, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on October 7, 2016. I find that the Amended Application for Dispute Resolution was sufficiently served on the Tenants by mailing, by registered mail to where the Tenants reside. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2014. The rent is \$2200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1100 at the start of the tenancy.

The tenant(s) failed to pay the rent for many months and the sum of \$23,650 remains owing to the end of October 2016. In addition the landlord has had to pay two Municipality of Delta bylaw offence notices at \$175 each. The tenant testified the rent has been paid for November. The tenants continue to live in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for November 30, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

The Tenant testified has had discussions with the landlord about remaining in the rental unit and paying the arrears. An arbitrator no longer has the authority to grant an extension of time to pay the rent. However, it is open for the parties to make a settlement between themselves as to how the arrears are to be paid and whether the tenants could remain in the rental unit. The agent for the landlord provided the Tenant with her telephone number and the Tenant is encouraged to discuss this matter with the landlord's agent.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for many months and the sum of \$23,650 remains outstanding to the end of October 2016. In addition the landlord is entitled to recover \$350 for the bylaw offences which the landlord has had to pay on behalf for the tenants' infraction. I granted the landlord a monetary order in the sum of \$24,000 plus the sum of \$100 in respect of the filing fee for a total of \$24,100.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1100. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$23,000.

Conclusion:

I granted an Order for Possession effective November 30, 2016. I ordered that the Landlord shall retain the security deposit of \$1100. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$23,000.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 24, 2016

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Residential Tenancy Branch