



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

Landlords: OPR, MNR  
Tenants: MNDC, O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought a monetary order. The hearing was conducted via teleconference and was attended by the male landlord and both tenants.

At the outset of the hearing the male tenant testified that they had not received a copy of the landlords' Application for Dispute Resolution but had received only evidence in response to the tenants' Application. Both parties provided testimony as to how these documents were served and received. The tenant went through all of the documents he had in front of him and after about 15 minutes of hearing he realized that they had received the landlords' Application.

During this time I also confirmed that the tenant had submitted to the Residential Tenancy Branch and served to the landlord an Amendment to an Application for Dispute Resolution seeking to include that the tenants were seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. I amend the tenants' Application to allow the tenants to dispute the 10 Day Notice.

As such, I am satisfied that both parties were sufficiently aware of the hearing and what matters would be adjudicated.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to a monetary order for compensation for the loss of quiet enjoyment and landlords' failure to provide notice to enter the rental unit, pursuant to Sections 28, 29, 46, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on February 19, 2016 for a month to month tenancy beginning on April 1, 2016 for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 required;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 9, 2016 with an effective vacancy date November 22, 2016 citing the tenant owed \$550.00 in rent that was due as of April 1, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 9, 2016 with an effective vacancy date November 22, 2016 citing the tenant owed \$500.00 in rent that was due as of November 1, 2016.

The tenants submitted that when they entered into the tenancy agreement they were promised a long term rental but in mid-September 2016 the landlords informed them that they were going to sell the unit.

The male tenant originally testified that the landlords had informed him that showings would be scheduled Mondays; Wednesdays; and Fridays between 2:00 and 5:00 p.m. He went on to say that on the first day of showings there 4; the landlords' realtor showed the unit at least 10 additional times and that there were 3 or 4 other relators who showed the property at least 5 or 6 times each. This range totals of up to between 25 and 56 showings.

The tenant later stated that from the week of September 18, 2016 to mid-November 2016 or approximately 2 months there were over 20 showings. The landlord testified that his realtor confirmed that there were 9 showings between September 23 and October 21 2016.

The landlord submitted that without any indication of any concerns from the tenants he had informed them that the realtor would contact the tenant by email to inform of any showings. The landlord stated that this was the preferred method of contact because the tenants did not have a phone. The landlord stated the showings were arranged by the realtor; that the tenants rejected 4 different dates and were given at least 24 hours' notice in all cases.

The tenants seek compensation in the form of a rent reduction for the months of September, October, and November 2016 in the amount of \$300.00 per month for the over 20 viewings and the landlord's failure to provide notice in accordance with the *Act*. The tenants provided no explanation as to how they determined the amount of \$300.00.

In support of their claim the tenants have submitted several emails that confirm the landlord's realtor contacted the tenants 6 times asking the tenants' agreement for 8 showings. In some cases the tenants have included their response agreeing the showings and in some cases disagreeing. The tenants also included an email from the tenant dated October 18, 2016 wondering if the property had been sold because there hadn't been any recent showings.

The landlord testified that when the tenancy began the tenants were to deposit \$1,500.00 to the landlords' account but they only deposits \$950.00. The landlord submitted that the amount collected represented the \$500.00 security deposit and \$450.00 rent for April 2016. The landlord submitted that despite repeated attempts to collect the payment the tenant never did pay the landlord.

The male tenant testified that it was not rent that the landlord was owed but the security deposit. He stated that when he paid the landlord in April 2016 the \$950.00 and that he was short by \$50.00 and he did not pay the security deposit. The tenant submitted that he withheld the security deposit was not cleaned and they had to spend a long time cleaning it.

The landlords submitted a copy of the Condition Inspection Report signed by both parties recording the condition of the rental unit as good with no cleaning required. The landlords also submitted emails from the tenant stating that there was a problem with the cheque that he was supposed to receive to cover both rent and the security deposit – the email does not mention any intention to withhold any payment but rather that he intends to pay the landlords as soon as possible.

The parties agreed the tenants paid only \$500.00 rent for the month of November 2016. The tenant stated he withheld the rent because of his issues with the showing of the rental unit during the fall months as noted in his claim above.

The landlord confirmed that he issued the two Notices to End Tenancy and served them to the tenant on November 9, 2016 by putting them in the rental unit mailbox. In their Amendment to an Application for Dispute Resolution the tenant wrote that on November 9, 2016 he received a Notice to End Tenancy and he wanted to dispute it.

In the hearing the male tenant first testified that he had received the Notice on the November 9, 2016 but he was "deemed" to have received it 3 days later. The tenant then stated that he had been out of town but that a friend who was staying with him saw it being placed in the mailbox on November 9, 2016. The male tenant then testified he received it on the 11<sup>th</sup> or 12<sup>th</sup> of November and finally stated that he received it on November 12, 2016.

The tenant then confirmed that he submitted his Amendment form on November 21, 2016. He stated that he had originally filed a separate Application for Dispute for Resolution to dispute the Notice but he could not confirm on what date. He first stated that he submitted it on November 16, 2016 then stated either he submitted on either the 17<sup>th</sup> or 18<sup>th</sup>. He stated that on November 21, 2016 he contacted the Service BC office and he was told he didn't have to submit a new Application for Dispute Resolution but rather he could just amend his current Application.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authorizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property. Section 29(2) stipulates that the landlord may inspect a rental unit monthly.

Where a notice is given that meets the time constraints of the *Act*, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- Inspecting the premises for damage,
- Carrying out repairs to the premises,
- Showing the premises to prospective tenants, or
- Showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the *Act* a landlord may inspect a rental unit monthly.

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

Based on the submissions of both parties I find the evidence confirms, at most, the landlord's realtors showed the rental unit 9 times. Specifically, I find the tenant's explanation was vague and did not include any specific dates of entry. Even though the

tenant submitted several emails showing requests for showings most of the emails were duplications of the same requests. I find the tenants' estimates were extremely exaggerated as being in a range of 25 to 56 showings. As a result, I find the tenant's evidence does not provide any indication of an excessive amount of entry for a legitimate purpose.

As such, I find the tenants have failed to establish a breach of their right to quiet enjoyment or the landlord's obligations under Section 28 of the *Act*.

As to the issue of the landlord's obligations under Section 29 to provide adequate notice of entry, I note the tenant specifically identified that the landlord failed to provide the required 24 hour notice for each visit. However as noted above, Section 29 allows the landlord entry without 24 hour notice if the tenant agrees to the entry. I find the tenants had at least on some occasions provided their agreement to the realtors for the showings.

In addition, the requirement for advance notice of entry is not specifically limited to 24 hour notice for each entry. Section 29 also allows the landlord may enter if at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry.

The male tenant confirmed in his testimony that the landlord had informed them that they would be showing the rental unit on Mondays, Wednesdays, and Fridays between 2:00 p.m. and 5:00 p.m. I find that such notification complies with the above noted requirement under Section 29 from the date the tenant received that notification until 30 days later. As a result, I find the tenants have failed to establish the landlord has violated Section 29 of the *Act*.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

While I am not completely satisfied the male tenant has provided accurate testimony in regard to the dates he either received the 10 Day Notice or filed a new Application for Dispute Resolution seeking to cancel the Notice I find the granting of more time will allow for the adjudication of the merits of the Notice and will not prejudice the landlord. I grant the tenant additional time to submit his Amend to include disputing the 10 Day Notices issued on November 9, 2016,

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier

than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the Act.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

As I have allowed the tenants additional to submit their Amendment seeking to cancel the 10 Day Notice the tenants must submit valid reasons under the *Act* to withhold any payment of rent during the tenancy.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Despite the tenant's claims that the landlord was not complying with the *Act*, they have provide no evidence to support that they had any authority under the *Act* to withhold any amount of rent from either the April 2016 payment or the November 2016 payment.

As the male tenant agreed that they had failed to pay the full amount of rent for both of those months and the rent remains outstanding at the time of the hearing I find both Notices to End Tenancy for Unpaid Rent the landlord issued on November 9, 2016 are enforceable and the landlord has the right to end the tenancy pursuant to Section 46.

As to the amount of rent owed to the landlords, I am not persuaded by the tenant's submission that he had paid \$950.00 towards rent for April 2016. Despite the tenant's assertion that is what he intended, I find it was not up to the tenant to decide what liability the landlords chose to apply the payment too.

A landlord is only allowed to collect a security deposit at the start of a tenancy as per Section 17 of the *Act*. As such, I find the landlords are allowed to consider the payment to be to fulfill the tenant's obligation to pay a security deposit of \$500.00 and a partial rent payment of \$450.00. Therefore, I find the tenants owe the landlords \$550.00 for rent for the month of April 2016. I also find, by agreement, the tenants owe the landlords \$500.00 for November 2016 rent.

### Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution, as amended, in its entirety.

I find the landlord is entitled to an order of possession effective **December 31, 2016 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,050.00** comprised of rent owed.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: December 14, 2016

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Residential Tenancy Branch