



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      OPR, OPC, MNR, MNDC, FF, CNC, CNR

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants seek:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- recovery of the filing fees for this application from the landlords pursuant to section 72.

The landlords seek:

- an Order of Possession for unpaid rent pursuant to section 55;
- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- recovery of the filing fees for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were represented by their agent who spoke on their behalf (the “tenant”). Both landlords were represented by their agent (the “landlord”) who confirmed she had full authority to speak, negotiate and enter into binding agreements on their behalf.

The landlord testified that both the 10 Day Notice and 1 Month Notice were served personally on the tenants on November 30, 2016. The tenant confirmed receipt. I find that the tenants were duly served with the notices on November 30, 2016 in accordance with section 88 of the Act.

The tenant testified that he personally served the tenants’ application for dispute resolution on the landlords on or about December 6, 2016. The landlord confirmed receipt of the tenants’

dispute resolution package. I find that the landlords were served with the tenants' application for dispute resolution in accordance with section 89 of the Act.

The landlord testified that the landlords' application for dispute resolution dated December 13, 2016 was served on the tenants on December 19, 2016 by registered mail and subsequently by posting on the rental unit door. The landlord provided two Canada Post tracking numbers as evidence. The tenant denied receiving the registered mail, citing issues with postal delivery at the rental unit address, but confirmed receiving the landlords' application. I find that the landlords' dispute resolution package was duly served on the tenants on December 24, 2016, five days after mailing.

During the hearing the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that they wish to reduce the amount sought to \$1,950.00 which represents the rent owing as of the date of the hearing, January 10, 2017. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to decrease the landlords' monetary claim from \$3,100.00 to \$1,950.00.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent? Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession for cause? Are the landlords entitled to a monetary award as claimed? Are the landlords entitled to recover the filing fee for the application from the tenants? Are the tenants entitled to recover the filing fee for this application from the landlords?

#### Background and Evidence

The parties agreed on the following evidence. The tenants began residing in the rental unit in December, 2015. The current landlords took over the tenancy in early 2016. The rent is \$750.00 payable on the first of the month. No security deposit was paid by the tenants at the start of the tenancy. The tenants currently reside in the rental unit.

The landlord testified that at the time the 10 Day Notice was issued to the tenants the tenancy was in arrears by \$1,500.00 as the tenants had failed to pay the rent for October and November. The landlord testified that since issuing the 10 Day Notice the tenants have failed to pay the rent for December and January.

The tenant acknowledged that there was a rental arrear at the end of October 2016. The tenant testified that an agreement was made directly with the owner of the numbered company landlord, KS, for payment of the arrears. The tenant testified that he and KS agreed that the arrear amount would be reduced to \$1,000.00. The tenant testified that he made payment of \$500.00 to the landlord on November 4, 2016 and a second payment of \$500.00 to the landlord on November 23, 2016. The tenant testified that both payments were made in cash and handed directly to KS. The tenant testified that this agreement was not put down in writing. The tenant

testified that KS did not provide receipts for the payments but as receipts were not issued for other payments made during the tenancy he did not find this notable and did not request receipts. The tenant testified that after being served with the landlords' application for dispute resolution he stopped making any payments to KS or the landlords. The tenant testified that rent for the months of December and January have not been paid.

The landlord testified that she had no knowledge or records of any agreement made by the KS or the payments made by the tenant in November. The landlord testified that the rental arrear was \$1,500.00 at the time the 10 Day Notice was issued. The landlord testified that even if the tenant had made the payments to KS as claimed, there would still have been a rental arrear of \$500.00 at the time the 10 Day Notice was issued. The landlord testified that since the 10 Day Notice was issued no payments were made by the tenant.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$1,500.00 at the time the 10 Day Notice was issued. The tenant denies that there was a rental arrear and testified that he had reduced the arrear to \$1,000.00 by negotiating directly with the landlord KS and had made two cash payments in the amount of \$1,000.00 eliminating the arrear entirely.

While I found the tenant to be forthright, sincere and consistent in his testimony the lack of any written evidence or witnesses to the agreement or payments raises considerable doubts. Considered in its totality, I find the evidence presented by the landlords more credible than that of the tenants. I do not find it credible that an agreement was reached and payments made without any collateral evidence. Even if receipts were not issued the tenant could have submitted other evidence of arranging to make payments to KS such as correspondences or bank statements showing withdrawals. The tenant had the opportunity to provide evidence in support of his version of events but failed to do so. I find the landlords' version of events that the tenants have failed to pay the full rent arrear to be more credible.

I accept the landlords' evidence that there was a rental arrear in the amount of \$1,500.00 when the 10 Day Notice was issued and that the tenants failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the effective date of the 10 Day Notice, December 10, 2016. Therefore I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As I have found the landlords are entitled to an Order of Possession for unpaid rent I make no finding on the landlords' 1 Month Notice.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

I issue a monetary award in the landlords' favour in the amount of \$1,950.00, the amount claimed by the landlord at the hearing, which includes the unpaid rent for this tenancy and the filing fee.

### Conclusion

The tenants' application is dismissed.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour for \$1,950.00.

The tenant(s) must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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: January 12, 2017

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Residential Tenancy Branch