



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPL, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for landlord's use pursuant to section 55;
- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord, SA, (the "landlord") confirmed that she represents both the corporate and individual landlords.

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice"), the application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served copies of the landlords' application and evidence.

The landlord testified that the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated December 7, 2016 was served on the tenant by posting on the rental unit door on that date. While the tenant testified that he had not received the 10 Day Notice, I find that by posting on the rental unit door the landlord served the 10 Day Notice in accordance with section 88 of the *Act*. Therefore, I find that

the tenant was duly served with the landlords' 10 Day Notice on December 10, 2016, three days after posting.

During the hearing the landlord testified that they are seeking an Order of Possession for a January 31, 2017 date pursuant to their 2 Month Notice. The landlord testified that they are not seeking an Order of Possession under the 10 Day Notice which provides an end of tenancy date of December 17, 2016. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I amend the landlords' Application to take into account the landlords' withdrawal of the application to end this tenancy on the basis of the 10 Day Notice.

#### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for landlords' use?

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy agreement began some time in 2015. The current monthly rent is \$525.00 payable on the first of the month. The tenant provided a security deposit of \$262.50 when the tenancy began and the amount is still held by the landlords. The tenant continues to reside in the rental unit.

Both the landlord and tenant testified that the tenant failed to pay the rent of \$525.00 for December. The landlord testified that January rent has not been collected as the tenant is entitled to withhold the last month's rent.

The tenant testified that there are a number of deficiencies in the rental unit, such as the tenant being denied access to the laundry facilities.

#### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an

application for dispute resolution within the 15 days of service granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ends on the effective date of the 2 Month Notice, January 31, 2017. I issue an Order of Possession pursuant to section 55 of the *Act*.

I find that the tenant was obligated to pay the monthly rent in the amount of \$525.00. I accept the evidence of the parties that the tenant failed to make the rent payment due in December and that the total amount of arrears for this tenancy is \$525.00. I issue a monetary award for unpaid rent of \$525.00 as at January 23, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$262.50 in partial satisfaction of the monetary award issued in the landlords' favour. No interest is payable over this period.

### Conclusion

I grant an Order of Possession to the landlords effective by **1:00pm on January 31, 2017**. Should the tenant or anyone 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 in the amount of \$362.50 under the following terms, which allows the landlords to recover unpaid rent for December, and the filing fee for their application:

Item	Amount
Unpaid Rent December	\$525.00
Filing Fees	\$100.00
Less Security Deposit	-\$262.50
<b>Total Monetary Order</b>	<b>\$362.50</b>

The tenant must be served with this Order as soon as possible. Should the tenant 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 24, 2017

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Residential Tenancy Branch