



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, RR, FF, MNR, MNSD, OPC and OPR

### Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenants requested:

- cancellation of the landlords’ two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) pursuant to section 46 of the *Act*;
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 47 of the *Act*;
- an Order to have the landlords comply with section 62 of the *Act* for loss of quiet enjoyment;
- an Order directing the landlords to reduce rent for their failure to provide facilities agreed upon pursuant section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The landlords requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications"). In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

Issue(s) to be Decided

- Should the landlords' 10 Day Notices be cancelled? If not, are the landlords entitled to an Order of Possession?
- Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?
- Should the landlords be ordered to reduce the rent for facilities not provided?
- Should the tenants be compensated for loss of quiet enjoyment?
- Are the landlords entitled to retain all, or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?
- Is either party entitled to a return of their filing fee?

Background and Evidence

This tenancy between landlords, SD and MR, and tenants CS and MM, began on September 26, 2015. It is a fixed term tenancy scheduled to end on March 31, 2017. Monthly rent is set at \$1,100.00 due on the first of the month. A \$550.00 security deposit continues to be held by the landlords. The home's owner, YW, lives overseas and SD and MR were appointed by YW to act as landlords in the home.

On November 16, 2016, a 10 Day Notice for unpaid utilities was served on the tenants by placing it on their unit door. Pursuant to section 90 of the *Act* the deemed service date for this notice was November 19, 2016, making the effective date of the 10 Day Notice to be November 29, 2016. On November 22, 2016 the tenants filed a Tenant's Application for Dispute Resolution.

The reason cited for the issuance of this first 10 Day Notice was unpaid utility bills in the amount of \$395.02.

Both parties acknowledged that their tenancy agreement required the tenants to pay a portion of the hydro, power and cable bills. The landlords claimed that the tenancy

agreement called on the tenants to pay 1/3 of the overall bills, while the tenants disputed this fact and argued that they were meant to pay 1/4 of the bills. The tenants explained the reason for this discrepancy as being that at various times, the landlords housed a different number of persons in their suite and therefore, the tenants felt that the bills should be adjusted accordingly. Because of their strong feelings regarding the higher amount due, the tenants did not pay any of the amount of money requested of them by the landlords, leading to the issuance of the 10 Day Notice.

On November 30, 2016, two further notices to end tenancy were issued to the tenants by the landlords. A second 10 Day Notice was served on the tenants in person for unpaid September 2016 rent. The landlords explained that the tenants had failed to pay the complete amount due that month and that \$100.00 remained outstanding.

Also on November 30, 2016, a 1 Month Notice was served on the tenants in person by the landlords. The reasons cited on the landlords 1 Month Notice included the tenants:

- *repeated late payment of rent*
- *significantly interfering with the landlords*
- *seriously jeopardizing the health or safety of the landlords*
- *putting the landlords' property at significant risk*
- *adversely affecting the quiet enjoyment, security, safety of physical well-being of another occupant*

On December 1, 2016, an Amendment to the tenants' Application for Dispute Resolution was submitted by the tenants to include a dispute of the November 30, 2016 10 Day and 1 Month Notices to End Tenancy.

On December 6, 2016, the Landlords' Application for Dispute Resolution was filed with the Residential Tenancy Branch seeking an Order of Possession pursuant to the 10 Day Notices, and the 1 Month Notice. The landlords also included an application for a Monetary Order for \$736.19.

On December 13, 2016, an amendment to the Landlords Application for Dispute Resolution was submitted by the landlords to include an amended monetary order for \$2,206.62. The new figure cited by the landlords, reflected the unpaid bills that had been issued since the filing of the Landlord's Application for Dispute Resolution.

Specifically, the landlords have cited:

Recovery of outstanding rent for September 2016	\$ 100.00
Recovery of all outstanding utilities	636.19
Recovery of the Filing Fee	100.00
Rent for January 2017	1,100.00
Estimates for utility bills for December 2016 & January 2017	270.49
<b>Total Requested</b>	<b>\$2,206.68</b>

Pursuant to section 75 of the *Act*, I will take into consideration this late evidence pertaining to the utility bills for December 2016, as the tenants acknowledged that they had a chance to review the new amounts. The tenants stated that they largely agree with the amounts requested owing for utilities.

#### Analysis – 10 Day Notice issued November 16, 2016

The 10 Day Notice issued on November 16, 2016 by the landlords cited a failure by the tenants to pay outstanding utility bills of \$395.02. A close examination of the evidence submitted to the hearing revealed a discrepancy between this 10 Day Notice and the one the tenants filed with their dispute resolution package. The landlords' 10 Day Notice stated that a written demand had been issued on October 16, 2016. The tenants' 10 Day Notice indicated that a written demand had been issued on November 15, 2016. Section 46(6)(b) of the *Act* reads

If the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Under these circumstances, it is difficult to determine which of the two Notices entered into written evidence is correct. If the 10 Day Notice submitted into evidence by the tenants is correct in stating that a written demand letter had been issued on November 15, 2016, the tenants would have had until December 15, 2016 to pay the outstanding utility bill. The landlords would have therefore served the 10 Day Notice on the tenants prematurely. It is impossible to determine when a written demand letter was issued and therefore I must dismiss the landlords' application for a 10 Day Notice for unpaid utility bills. **The landlords' application for an Order of Possession based on the 10 Day Notice of November 16, 2016 is therefore dismissed.**

Analysis – 10 Day Notice issued November 30, 2016

The landlords testified that the tenants had failed to pay the total amount of rent due for September 2016. Because of this, a 10 Day Notice for unpaid rent was served on November 30, 2016, in person on the tenants. On this form, the landlords incorrectly identified the date on when the tenant must move out as being November 30, 2016 versus the corrected date, December 9, 2016.

Section 52 of the *Act* states that;

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) **state the effective date of the notice,**
- (d) state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form

Section 10 of the *Act* allows me to accept forms when a deviation has occurred, provided that the changes required do not affect its substance and are not intended to mislead. Based on the testimony of both the landlords and tenants explaining their desire to end the tenancy, and the landlords issuance of a 1 Month Notice for Cause, I am satisfied that the landlords' error in properly marking the move-out date was not an attempt to mislead the tenants. Furthermore, the substance of the 10 Day Notice was not changed as a result of the landlords' error.

The tenants failed to pay the September 2016 rent within five days of receiving the 10 Day Notice to End Tenancy on November 30, 2016. During the course of the hearing, the tenants acknowledged under oath that they had only paid partial rent for September 2016 and that \$100.00 remained outstanding.

As the tenants have failed to pay the entire amount of rent identified as owing in the 10 Day Notice of November 30, 2016 by December 4, 2016, I find the 10 Day Notice issued on November 30, 2016 to be valid and the tenancy to have ended on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by December 9, 2016. As that has not occurred, I find that **the landlord is entitled to a 2 day Order of Possession**. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Analysis – 1 Month Notice for Cause

Since an Order of Possession was ordered pursuant to section 46 of the *Act*, there is no need to discuss this Notice.

### Reduction of Rent for Failure to Provide Facilities

Section 65 of the *Act* provides relief for landlords and tenants when one party has not complied with the *Act*, the regulations or a tenancy agreement.

The tenants sought a reduction of rent as compensation for the landlords' failure to provide them with a storage locker as promised by the online ad and in an inspection of the property with the owner of the home, YW.

Much evidence was submitted by both the tenants and landlords on this matter. Photographs were submitted in the evidentiary package of the landlords, while a floor plan and copies of the online ads were produced in the tenants' evidentiary package. Both parties agree that the landlords and the tenants did not ever meet to discuss this matter prior to the start of the tenancy. In a letter entered into evidence by the tenants it was stated, "we never went through the suite nor did we discuss any differences with SD or RM."

The concerns that the tenants had surrounding the differences between their expectations and the reality of the rental suite should have been communicated to the landlords, SD and RM. It is puzzling to me why a tenant who had such pressing concerns surrounding the adequacy of a storage area that was advertised versus what was delivered would not communicate these concerns to their landlords.

In this case, the tenancy agreement was entered into between SD, RM and CS, MM. I note that on the tenancy agreement it does indicate that storage is included with the monthly rent, however, because this agreement was entered into between the named landlords and tenants, it would be up to the landlords to determine what they judged to be storage. I find the fact that the tenants acknowledge that they have entered into a tenancy agreement with SD and RM (the landlords), not the overseas homeowner, YW to be compelling. This indicates that the tenants were willing to abide by a tenancy drafted by the landlords, which, based on the landlords' testimony, did not include the storage area in question. The tenants have acknowledged that they toured the suite only with the homeowner, not with the landlords. Furthermore, they confirmed at the hearing that they did not discuss any differences regarding the storage with the

landlords. As such, I am dismissing the tenants' application for relief under section 65 of the *Act*, as I do not find that they have established their entitlement to such relief.

### Section 62 – Loss of Quiet Enjoyment

Pursuant to section 62 of the *Act*, the tenants sought an order directing the landlords to comply with their right to quiet enjoyment of the rental unit as afforded by section 28 of the *Act*. The tenants submitted written evidence prior to the hearing in which they maintained that their right to quiet enjoyment of the rental property had been disturbed by the landlords. During the course of the hearing the tenants argued that these incidents had increased significantly after the first 10 Day Notice was issued. Both parties agreed that the relationship between the tenants and landlords had become very strained. On November 28, 2016 an incident occurred between tenant CS and landlord SD, leading the landlords to file a report with the RCMP. This incident stemmed from a dispute over a cable box and the landlords conduct surrounding the tenants' email account. Specifically, landlord SD prevented tenant CS from accessing her personal email account until all outstanding debts were paid. This led to a physical confrontation, of which conflicting accounts were presented.

The purpose of the Residential Tenancy Branch ("RTB") is to ensure that both landlords and tenants are able to pursue successful tenancies. It is counter to the spirit of the RTB, and to the dispute resolution process, to have parties engage in methods of enforcement that interfere with each other's rights. I find that the landlords did violate the right to quiet enjoyment of the tenants and pursuant to sections 28 and 67 of the *Act* I am awarding the tenants \$100.00 as compensation. Since this tenancy is ending, this amount will be deducted from any Monetary Order issued.

### Analysis - Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to their claim for a monetary award

During the course of the hearing, the tenants acknowledged that they owed the total amount requested for outstanding utilities, minus \$100.00. They cited the fact that the landlords had a different number of persons in their unit at various times and therefore more utilities were being used during these instances. While this may be the case, all evidence received including a letter from the landlords, addressed to the tenants stating that the landlords did use more power at one point but took steps to adjust the bills accordingly, indicates an agreement between the parties for the tenants to cover 1/3 of all utilities. Pursuant to section 67 of the *Act*, **I grant the total amount requested by the landlords for their utility costs of \$841.68.** This figure reflects the amount requested \$636.19, along with the utility bills of \$205.49, received in December 2016.

Further to this amount, **the tenants must also pay the outstanding rent for September 2016 of \$100.00.**

I decline to award the amounts requested by the landlords for January 2017 rent or January 2017 utilities. These bills were not yet due at the time of the hearing and I cannot make an award for future costs. The landlords are at liberty to apply for these items if the tenants did not pay for these items in accordance with the *Act*.

In their original application for dispute resolution, the landlords applied to keep all or part of the security deposit to apply against their monetary claim. I find this to be a reasonable request and pursuant to section 72 of the *Act*, **I allow the landlords to keep the entire amount of \$550.00.**

As the tenants were successful in one aspect of their claim, **I award the tenants \$100.00 for loss of quiet enjoyment.**

**The landlords are provided with a formal copy of an order for a monetary award totaling \$291.68.**

As both parties were successful in aspects of their claims, they must cover the cost of their own filing fees.

### Conclusion

**I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenants.** The landlords will be given a formal Order of Possession which must be served on the tenants. Should the tenants or any other occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.



**I am making a Monetary Order in favour of the landlords for \$291.68 as follows;**

Recovery of outstanding rent for September 2016	\$ 100.00
Recovery of all outstanding utilities	841.68
Less Security Deposit	-550.00
Less Award to Tenants for loss of Quiet Enjoyment	-100.00
<b>Total Awarded</b>	<b>\$291.68</b>

The landlords are provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 18, 2017

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Residential Tenancy Branch