



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord's Application: OPR, MNR, ET, FF

Tenant's Application: CNR, MNDC

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act"). The tenants are seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued December 2, 2016 (the "10 Day Notice"); and a monetary order for money owed or compensation for damage or loss under the act, regulation or tenancy agreement (the "Tenant's Application").

The landlords are seeking an order of possession for unpaid rent; a monetary award for unpaid rent; an order to end the tenancy early and recovery of the filing fee for their application from the tenants (the "Landlord's Application").

Landlord S.B.N. (the "landlord") appeared at the teleconference hearing. The tenants did not appear but had the opportunity to do so for the length of the hearing which lasted 43 minutes. The landlord gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that Tenant A.B. and A.S. are one and the same person. The landlord testified that Tenant B.B. and B.S. are also one and the same person. The tenancy agreement shows the names of the tenants as A.B. and B.B. The tenants, however, have listed the male tenant's name on their application as B.S. The landlord testified that he was uncertain as to the proper last name for both tenants so he included both last names in his application.

The landlord testified that on December 16, 2016 he sent one registered mailing to each tenant with a copy of the Application and Notice of Hearing for both last names in each mailing. The landlord sent the registered mailings in the name of the tenants as shown on the tenants' Application. The landlord provided the registered mailing receipt with the Tracking Number to confirm the mailing. Taking into account that the online registered mail tracing information supports the undisputed testimony of the landlord and in accordance with section 89 and 90 of

the *Act*, I find that the tenants have been deemed served with the landlord's Application and Notice of Hearing on December 21, 2016, the fifth day after the registered mailing. Furthermore, as the tenants' hearing for their Application was scheduled to be heard at the same time and date, I am satisfied that the tenants knew of this hearing.

### Preliminary and Procedural Matters

Tenants' Application:

Rule 10.1 of the Rules of Procedure provides as follows:

#### 10.1 Commencement of the hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to reapply.

Accordingly, in the absence of any evidence or submissions from the tenants/applicants, the claims set out in the tenants' application were not considered. The only issues to be decided were those set out in the landlord's application.

As the landlord's notice to end the tenancy is based upon unpaid rent and not for cause, the landlord's claim to end the tenancy early pursuant to s.56 of the *Act* is unnecessary. Accordingly, I dismiss that part of the landlord's claim.

### Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to recovery of the filing fee for their application from the tenants?

### Background and Evidence

The landlord testified that a month to month tenancy started on November 1, 2016 pursuant to a written tenancy agreement signed by the tenants on October 30, 2016. The landlord testified that the tenants moved into the rental unit on October 30, 2016. The rent is \$1,650.00 due on the first day of each month. The landlord testified that he received a security deposit in the amount of \$825.00 and a pet damage deposit in the amount of \$475.00 on October 20, 2016.

The landlord testified that by consent, the security deposit and pet damage deposit was applied towards the tenants' rent due for the month of November 2016. The landlord testified that the tenants agreed to repay the deposit amounts by November 13, 2016 but they did not do so.

The landlord testified that on December 2, 2016 he served the tenants with a 10 Day Notice by posting a copy on the door of the tenants' rental unit. The amount of unpaid rent shown on the

10 Day Notice is \$1,650.00 for rent due December 1, 2016. The 10 Day Notice is dated December 2, 2016 and required the tenants to move out by December 12, 2016.

The landlord testified that the tenants have not paid the rent due on January 1, 2017 in the amount of \$1,650.00. The landlord requested to amend his application to include the full amount of unpaid rent for January 2017.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the following.

#### Tenant's Application:

In the absence of any evidence or submissions from the tenants/applicants, the tenants' application is dismissed without leave to reapply.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s. 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

Based on the above undisputed testimony and evidence, and on a balance of probabilities, I find that the 10 Day Notice was served in accordance with s.88 of the *Act* and that it complies with s.52 of the *Act*. As a result, I find the landlord is entitled to an order of possession.

#### Landlord's Application:

As the tenants were served with the landlord's Application and Notice of Hearing and did not attend the hearing, I consider the landlord's application to be unopposed by the tenants. As a result, I find that the evidence supports the landlord's claim and is reasonable.

I find that the tenants were required to pay the monthly rent amount of \$1,650.00 for each of the months of December 2016 and January 2017 and failed to do so. I find that the tenants are not prejudiced by the landlord's request to amend his application to include the full amount of unpaid rent for January 2017 as the tenants knew or ought to have known that they were required to pay the rent when due. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$3,300.00.

As the landlord's application was successful, I also find that the landlord is entitled to recovery of the \$100 filing fee from the tenant.

Based on the foregoing, the landlord is entitled to a monetary order as follows:

December 2016 Unpaid Rent	\$1,650.00
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January 2017 Unpaid Rent	\$1,650.00
Filing Fee	\$ 100.00
Total	<b>\$3,400.00</b>

Conclusion

I dismiss the tenants' application without leave to reapply and I uphold the 10 Day Notice.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$3,400.00 for unpaid rent and the filing fee which must be served on the tenant(s) as soon as possible. Should the tenant(s) fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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