



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) provided undisputed affirmed evidence that the tenants were both served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 18, 2017 and again on February 3, 2017. The tenant disputed receiving the landlord's notice of hearing package, but acknowledged receiving the submitted documentary evidence as claimed. The landlord provided both Canada Post Customer Receipt Tracking numbers as confirmation of service. Both parties agreed to allow me to review the Canada Post online tracking to view the records of the landlord's packages. A review shows that both packages were sent to the tenants on January 18, 2017, went out for delivery on January 20, 2017 and again on February 6, 2017. Notice card(s) were left on each date. Canada Post then returned the packages to the landlord as "unclaimed". As such, I find that the tenants were properly served as per sections 88 and 89 of the Act. I find that the tenants were deemed served 5 days later on January 23, 2017 as per section 90 of the Act.

During the hearing the landlord confirmed that the second mailing address provided on the landlord's application was to be used for service of the decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on August 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated August 11, 2016. The monthly rent is \$2,750.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,375.00 was paid.

The landlord seeks an order of possession and a monetary order of \$7,850.00 for unpaid rent, for money owed or compensation for damage or loss which consists of:

\$2,750.00	Unpaid Rent, November 2016
\$2,350.00	Unpaid Rent, December 2016
\$2,750.00	Unpaid Rent, January 2017

The landlord also clarified that as of the date of this hearing no rent has been paid for February 2017 of \$2,750.00 as the tenant still occupies the rental premises.

Both parties confirmed that the landlord served to the tenant the 10 Day Notice dated December 5, 2016 on December 6, 2016 in person. The 10 Day Notice states that the tenant failed to pay rent of \$2,350.00 that was due on December 1, 2016 and sets out an effective end of tenancy date of December 15, 2016.

The landlord states that since the 10 Day Notice dated December 5, 2016 was served no rent has been paid as of the date of this hearing. The tenant provided affirmed testimony that he did pay the November 2016 rent of \$2,750.00 in cash to the landlord and that no rent has been paid to the landlord for December 2016, January 2017 and February 2017, except for the \$400.00 cash payment on December 2, 2016. The tenant stated that a verbal agreement was made with

the landlord for services in lieu of rent for November and December 2016. The landlord confirmed that a service in lieu of rent agreement was made verbally for November 2016, but that no such agreement was made for December 2016. Both parties provided conflicting and contradictory terms for the services for rent agreement for November 2016. Neither party was able to provide any supporting evidence regarding the service in lieu of rent agreements.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of both parties and find that the landlord did properly serve the tenant with the 10 Day Notice dated December 5, 2016 in person on December 6, 2016.

I also accept the undisputed affirmed evidence of both parties that the tenant did not pay all of the rent of \$2,750.00 as claimed by the landlord for December 2016. Both parties confirmed that the tenant paid \$400.00 of the rent on December 2, 2016. Both parties confirmed that the tenant failed to make any further rent payments for December 2016. The tenant stated that a verbal agreement was made with the landlord for service in lieu of rent, however the landlord disputed this claim. Although both parties agreed that a previous verbal agreement was made for services in lieu of rent for November 2016, the tenant was unable to provide any evidence of such an agreement. I also note that both parties confirmed that the tenant had made a partial payment of \$400.00 and that the tenant was immediately served with the 10 Day Notice. As such, I find that the tenant has failed to provide sufficient evidence that an agreement of service in lieu of rent was made. I find that the landlord has established grounds for unpaid rent under section 46 of the Act for the 10 Day Notice dated December 5, 2016. The tenant's application to cancel the 10 Day Notice is dismissed. The landlord is entitled to an order of possession effective 2 days after its service upon the tenant.

As for the landlord's monetary claim for November 2016 of \$2,750.00, I find that the landlord has failed to provide sufficient evidence of unpaid rent. Both parties confirmed that a verbal agreement for service in lieu of rent was made, but that both parties had provided conflicting and contradictory terms for that agreement. Without sufficient evidence from either party to determine specifically what the terms of the service in lieu of rent was made, I decline to make any order regarding the landlord's claim for unpaid rent. As such, this portion of the landlord's claim is dismissed.

The landlord's monetary claim of \$2,350.00 for December 2016 has been established. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant as noted above regarding the unpaid rent of \$2,350.00 for December 2016 based upon the 10 Day Notice. Although the tenant has claimed that a cash payment of \$2,750.00 as made to the

landlord, the tenant has failed to provide sufficient evidence to support this claim. As such the landlord has been successful in this portion of his claim. The landlord has established a claim for unpaid rent of \$2,350.00 for December 2016.

I find that based upon the undisputed affirmed evidence of the tenant that no rent was paid for January 2017 and February 2017 that the landlord has established a claim for \$5,500.00.

The landlord has established a total monetary claim of \$7,850.00. The landlord having been successful in his application is entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$1,375.00 security deposit in partial satisfaction of this claim.

### Conclusion

The landlord is granted an order of possession for unpaid rent.  
The landlord is granted a monetary order for \$6,575.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial of British Columbia and to be enforced as an order of those courts.

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: February 13, 2017

---

Residential Tenancy Branch