



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** OPR MNR MNSD FF MT CNR

### **Introduction**

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

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenants’ security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant, KA, requested:

- more time to make an application to cancel the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (‘10 Day Notice’) pursuant to section 66; and
- cancellation of the 10 Day Notice pursuant to section 46.

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 1:51 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords indicated in the hearing that one of the tenants, JH, had moved out of the rental suite. The landlords gave sworn, undisputed testimony that they had served the Application for Dispute Resolution Hearing package to JH by registered mail on February 27, 2017, to a forwarding address provided by the remaining tenant, KA. Section 89(1)(d) of the *Act* states that an application for dispute resolution, if served by registered mail to the tenant, must be sent “to

a forwarding address provided by the tenant". I find that the tenant, JH, was not served in accordance with section 89 of the *Act*.

Residential Tenancy Policy Guideline # 13 ('Guideline 13') clarifies the rights and responsibilities relating to multiple tenants. Guideline #13 states that "co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or one of the tenants". In accordance with Guideline 13, the remaining tenant, KA, can be held responsible for any unpaid rent for this tenancy.

The landlords provided sworn, undisputed testimony that the tenant, KA, was personally served with the landlords' Application and evidence on February 26, 2017. In accordance with section 89 of the *Act*, I find the tenant, KA, duly served with the landlords' application and evidence.

The landlords provided sworn, undisputed testimony that the tenants were personally served with the 10 Day Notice, with an effective date of February 17, 2017, on February 6 2017. The landlords included a Proof of Service in their Application. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 7, 2017.

### **Issue(s) to be Decided**

Should the tenant, KA, be granted more time to make her application for dispute resolution?

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

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

### **Background and Evidence**

The landlords testified regarding the following facts. This fixed-term tenancy began on June 15, 2016 with monthly rent set at \$1,350.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$675.00. The tenant, JH, has moved out. The tenant, KA, still resides at the rental suite.

The landlords issued the 10 Day Notice on February 7, 2017 to the tenants, indicating an effective move-out date of February 17, 2017. The landlords provided sworn, undisputed testimony that the tenants have not paid \$250.00 in rent for January 2017, and the entire monthly rent of \$1,350.00 for both February and March 2017. The landlords are seeking an

Order of Possession, as well as a Monetary Order for Unpaid Rent. The landlords are applying to retain the security deposit in partial satisfaction of this monetary claim.

### **Analysis**

Section 55(1) of the *Act* reads as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

**In the absence of any evidence or submissions from either of the tenants, I order the tenant, KA's, entire application dismissed without liberty to reapply.**

I find the landlords' 10 Day Notice is valid, and complies with section 52 of the *Act*. Based on my decision to dismiss the tenant, KA's, application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, February 17, 2017. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I accept the landlords' undisputed testimony that the tenants have not paid rent in the amount of \$2,950.00 for the months of January 2017 through to March 2017. Accordingly, I find that the landlords are entitled to a monetary order for the unpaid rent.

The landlords continue to hold the tenants' security deposit of \$675.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit of \$675.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

### **Conclusion**

I dismiss the tenant, KA's, entire application without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenants 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 order the landlords to retain the tenants' security deposit of \$675.00 in partial satisfaction of the monetary claim.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee.

I issue a \$2,375.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent plus the filing fee, and also allows the landlord to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for January 2017	\$250.00
Unpaid Rent for February 2017	1,350.00
Unpaid Rent for March 2017	1,350.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,375.00</b>

The tenant, KA, 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: March 17, 2017

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Residential Tenancy Branch