



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNC FF MNR MNSD O OPC OPR

### Introduction

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

The application from the corporate landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- an Order of Possession for Caused based on repeated late payments of rent pursuant to section 47 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The application from the tenants requested:

- a cancellation of the Notice to End Tenancy for Unpaid rent pursuant to section 46 of the *Act*.

The tenants, and the landlord, and the landlord’s agent, D.D., participated in the conference call hearing. They were all given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. D.D. made submissions on behalf of the landlord and will herein be referred to as the landlord.

The landlord testified that a 1 Month Notice to End tenancy for Cause (“1 Month Notice”) was issued on the tenants in person on April 21, 2017. The tenants acknowledged receiving this notice. Pursuant to section 88 of the *Act* the tenants are found to have been served with this 1 Month Notice on April 21, 2017.

The landlord testified that a 10 Day Notice to End Tenancy for unpaid rent or utilities (“10 Day Notice”) was given to the tenants on May 8, 2017. The tenants acknowledged receiving the notice. Pursuant to section 88 of the *Act*, I find the tenants were served with the 10 Day Notice on May 8, 2017.

On May 9, 2017 the tenants handed the landlord a copy of their application for Dispute Resolution. The landlord acknowledged receiving this package. Pursuant to section 89 of the *Act* the landlord is found to have been served with the tenants' application for Dispute Resolution.

Issue(s) to be Decided

Can the tenants cancel the landlord's Notices to End Tenancy? If not, should the landlord be granted an order of possession?

Is the landlord entitled to a Monetary Order?

Can the landlord retain the security deposit from the tenants?

Can the landlord recover the filing fee from the tenants?

Background and Evidence

Testimony and a copy of the Residential Tenancy Agreement provided by the landlord demonstrate that the tenancy in question began on March 1, 2017. Monthly rent was \$850.00 and a security deposit of \$425.00 was collected at the outset of the tenancy and continues to be held by the landlord.

The landlord stated that a 10 Day Notice was issued for unpaid complete rent for April and May 2017. The landlord is seeking a Monetary Order of \$2,075.00. This includes the cost of the unpaid rent for the months listed above, as well as unpaid rent for June 2017, \$75.00 in returned cheque fees, and a return of the filing fee. The landlord has also applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed and for recovery of the filing fee as per section 72 of the *Act*.

Specifically the landlord is seeking:

Item	Amount
Rental Arrears for May 2017	\$650.00
Rental Arrears for June 2017	850.00
Returned Cheque Fee (3 x \$25)	75.00
Filing Fee	100.00
<b>Total Monetary Award</b>	<b>\$1,675.00</b>

The reason cited by the landlord for the discrepancy between the Total Monetary Award listed above, and the amount requested in the Monetary Order is due to the fact that the tenants made a payment of \$200.00 on May 18, 2017 representing outstanding funds for April 2017. Another payment was made on June 1, 2017 representing outstanding funds for May 2017.

In addition to this 10 Day Notice issued, the landlord has applied for an Order of Possession based on a 1 Month Notice. The reasons cited by the landlord on the 1 Month Notice are:

- the tenants are repeatedly late paying rent
- the tenants or a person permitted on the property by the tenants has significantly jeopardized the health or safety or lawful right of another occupant or the landlord

During the course of the hearing, the tenants acknowledged not paying the rent. The tenants stated that they did not have the money as they were waiting for cheques from a provincial disability fund to pay their rent. The tenants stated that a mix-up with these cheques had led to this non-payment of rent. The tenants said that cheques are sent directly to the landlord on their behalf. The landlord stated that no cheques have been received and that typically a landlord is required to fill out a special form to receive funds in this manner. The tenants testified that on May 9, 2017 they attempted to have the landlord fill out this form but the landlord refused. The landlord denied this event occurred.

### Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenants have made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice little evidence was presented at the hearing demonstrating why rent has not been paid. The tenants provided testimony that their rent was to be paid by a provincial disability association and that an issue with these payments had led to these payments not being made. The landlord explained that in situations where rent is being paid by a 3<sup>rd</sup> party association, a form must be completed by the landlord and returned to the association. The landlord provided disputed testimony that the tenants have not taken any steps to ensure that this was done. If the tenants anticipated that there may be an issue with their rental payments, they should have taken steps to ensure that rent would be paid by another means. It is not sufficient to say that rent would be paid at some undefined time in the future without submitting any documentation, letters or statements in support of this conclusion.

In accordance with section 46(5) of the *Act*, the tenants' failure to pay rent within five days of the issuance of the 10 Day Notice, and their continued inability to pay the rent identified on the 10 Day Notice, led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 19, 2017. As that has not occurred, I find

that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

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 landlord to prove their entitlement to their claim for a monetary award.

The landlord sought a monetary order of \$2,075.00, which was the amount in unpaid rent for April, May and June 2017. During the hearing the landlord acknowledged that funds owing for April and May had been paid and the total monetary award now being sought was \$1,675.00. The landlord has also applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed.

The tenants acknowledged not paying rent for this time. They stated that they will not have the ability to pay rent until the arrival of the disability cheques. As this money remained outstanding at the time of the hearing, the landlord is entitled to the entire adjusted sum requested in the Monetary Order.

The landlord has applied to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$425.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they can, pursuant to section 72 of the *Act*, recover the cost of the \$100.00 filing fee from the tenants.

Since the landlord was successful their application for an Order of Possession pursuant to a 10 Day Notice, the landlord's application for an Order of Possession pursuant to a 1 Month Notice is dismissed.

### Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenants. Should the tenant(s) 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 of \$1,250.00 in favour of the landlord as follows:

Item	Amount
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Rental Arrears for May 2017	\$650.00
Rental Arrears for June 2017	850.00
Returned Cheque Fee (3 x \$25)	75.00
Filing Fee	100.00
Less Security Deposit	<b>(-425.00)</b>
<b>Total Monetary Award</b>	<b>\$1,250.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The landlord's application for an Order of Possession based on a 1 Month Notice is dismissed.

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: June 7, 2017

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Residential Tenancy Branch