



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

<u>Dispute Codes</u>	Landlord:	OPR MNR MNSD FF
	Tenant:	CNR O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application was dated May 12, 2017 (the “Landlords’ Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”);
- a monetary order for unpaid rent or utilities
- an order that the Landlord be permitted to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application is dated May 9, 2017 (the “Tenants’ Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling the 10 Day Notice;
- other unspecified relief

The Landlord was represented at the hearing by O.B., who provided a solemn affirmation. The Tenants did not attend the hearing.

On behalf of the Landlord, O.B. testified the Landlord's Application package was served on the Tenants by registered mail on March 24, 2017. Canada Post registered mail receipts were submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenants are deemed to have received the Landlord's Application package on March 29, 2017.

On behalf of the Landlord, O.B. was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order that the Landlord be permitted to keep all or part of the security deposit or pet damage deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Are the Tenants entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

The Landlord submitted into evidence a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy began on December 1, 2016, and was to end on November 30, 2017. Rent in the amount of \$1,300.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$650.00, which the Landlord holds.

On behalf of the Landlord, O.B. testified the Tenants did not pay rent in full when due on May 1, 2017, although they did pay \$650.00. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenants by posting a copy to the door of the Tenants' rental unit on May 4, 2017. The Tenants' Application confirms receipt on that date. According to O.B, the Tenants subsequently made a further payment of \$650.00 on May 31, 2017, which was accepted by the Landlord for use and occupancy only. According to the O.B., only \$650.00 was paid on account of rent for June 2017. As a result, rent in the amount of \$650.00 remains outstanding.

The Landlord also claimed \$50.00 in fees for the late payment of rent for May and June 2017, which is provided for in Schedule "A", paragraph 1, of the tenancy agreement between the parties.

Finally, the Landlord sought to recover the \$100.00 filing fee, and asked that the security deposit and pet damage deposit be applied in partial satisfaction of the Landlord's claim.

The Tenants did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 46 of the *Act* confirms that, upon receipt of a notice to end tenancy for unpaid rent or utilities, a tenant has five days to either pay rent in full or dispute the notice. Failure to do so results in the conclusive presumption the tenant has accepted the end of the tenancy. In this case, I find the 10 Day Notice was served on and received by the Tenants on May 4, 2017. The Tenants disputed the 10 Day Notice on May 9, 2017, within the timeframe permitted under the *Act*, but did not pay June rent in full until May 31, 2017. Rent was accepted by the Landlord at that time for use and occupancy only. Further, I find the Tenants did not pay rent in full when due on June 1, 2017, and that rent in the amount of \$650.00 remains outstanding.

As the Tenants did not pay rent when due, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

In addition, I find that rent in the amount of \$650.00 is outstanding. In addition, I find the Landlord is entitled to recover fees of \$50.00 for the late payment of rent in May and June 2017, as provided for in the tenancy agreement and pursuant to section 7 of the *Residential Tenancy Regulation*. Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee. Further, I order that the Landlord is permitted to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$150.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
June rent outstanding:	\$650.00
Late payment fees:	\$50.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$650.00)
<b>TOTAL:</b>	<b>\$150.00</b>

### Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$150.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 19, 2017

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Residential Tenancy Branch