



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes            MNR OPR

### Introduction

This review hearing was convened in response to a review consideration decision granted pursuant to section 79 of the *Act*.

. Following the issuance of the Order of Possession and Monetary Order, the tenants' applied for a review of this decision arguing they never received the Notice to End Tenancy for Unpaid Rent or Utilities. The tenants applied on the basis that they had new and relevant evidence that was not available at the time of the original hearing; and that they had evidence that the Arbitrator's decision or order was obtained by fraud. The arbitrator in the May 16, 2017 Review Consideration Decision determined that, "While I do not find that the Decision and Orders were obtained by fraud, I find that if this information had been before the adjudicator at the time of the Direct Request Proceeding, the outcome may have been different." She stated, "I find the Tenants have established sufficient grounds on the second ground for review for a new participatory Hearing on these matters." The second ground for review was that the tenants had new and relevant evidence that was not available at the time of the original hearing.

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") pursuant to section 46 *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

Both the tenants and the landlord appeared at the hearing. The landlord was represented by property manager, B.A. (the "landlord"). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions evidence under oath.

The tenants explained that they have never received a Notice to End Tenancy for Unpaid Rent. The landlord disputed this fact and explained that on April 19, 2017, he along with witness, R.S., posted a copy of the 10 Day Notice End Tenancy for Unpaid Rent on the door of the rental unit.

A copy of the Proof of Service document was submitted as part of the landlord's original Direct Request Proceeding. An examination of this document reveals that it contains the correct address of the rental unit, is dated as having been served on the day that corresponds with the landlord's testimony and signed by the witness to service. Pursuant to sections 88 and 90 of the *Act* the tenants are deemed served with the 10 Day Notice on April 22, 2017

Following opening remarks the landlord explained that he wished to amend his application for dispute resolution to reflect unpaid rent for June 2017. Pursuant to section 64(3)(c) of the *Act*, I allow the landlord to amend his application for a monetary award to reflect unpaid rent of \$900.00 for the month of June 2017 as the tenants continue to reside in the rental unit.

#### 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?

#### Background and Evidence

The landlord explained that this tenancy began on April 1, 2015. Rent is \$900.00 per month, and a security deposit of \$450.00 continues to be held by the landlord. Two pet deposits of \$50.00 each are also held by the landlord.

The landlord testified that rent in the amount of \$2,250.00 remains outstanding. This reflects partially unpaid rent for April 2017 (\$450.00) as well as unpaid rent for the months of May and June 2017 ( $2 \times \$900.00 = \$1,800.00$ ).

During the course of the hearing the tenants acknowledged that rent remained outstanding for the period of time cited by the landlord; however, they argued that on May 10, 2017 after receiving the Order of Possession and the Monetary Order issued against them as a result of Direct Request Proceedings, they attended the landlord's office to pay all outstanding rent. The tenants testified that an agent for the landlord refused to accept their money when they tried to pay it. The landlord disputed this fact saying, "We never refuse rent. We always accept rent."

#### Analysis

The tenants argued that they have never received the 10 Day Notice from the landlord. While I acknowledge their testimony and am sympathetic to their dispute, little evidence other than their testimony exists to refute the landlord's contention that a 10 Day Notice was posted on their door on April 19, 2017. I find the Proof of Service submitted to the Direct Request Proceeding to be accurate and determine that the 10 Day Notice was validly served on the tenants on April 22, 2017. Furthermore, the tenants explained that they submitted their own Application for Dispute Resolution. During the course of the hearing I was able to identify an application in the tenants'

name with file number 263767. An examination of this file notes that the hearing was cancelled on May 9, 2017 by tenant K.J., following a conversation with an Information Officer at the *Residential Tenancy Branch*. In addition, this file contained no application to cancel the landlord's Notice to End Tenancy.

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days 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 2, 2017, the effective date of the 10 Day Notice issued on April 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 tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia

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 his entitlement to his claim for a monetary award.

The landlord sought a monetary order of \$2,250.00, which was the amount in unpaid rent for April, May and June 2017.

The tenants acknowledged not paying rent in full for April 2017 and testified that they have not paid rent for May and June 2017. I find that based on the testimony of both parties that rent remains outstanding for this time period and that the landlord is entitled to a Monetary Order in reflection of this unpaid rent.

Using the offsetting provision contained in section 72(2)(b) of the *Act*, the landlord may retain the tenants' security and pet damage deposits against the Monetary Order issued pursuant to section 67 of the *Act*.

I find that the landlord is entitled to receive a monetary order for unpaid rent for \$1,800.00. 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.

### Conclusion

The landlord 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 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order pursuant to sections 67 & 72 of the *Act* for \$1,700.00 in favour of the landlord as follows:

Item	Amount
Partial unpaid rent for April 2017	\$450.00
Unpaid Rent for May 2017	900.00
Unpaid Rent for June 2017	900.00
Less Deposits (\$550.00)	<b>(-550.00)</b>
<b>Total Monetary Award</b>	<b>\$1,700.00</b>

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: June 29, 2017

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Residential Tenancy Branch