



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNR MNSD MNDC FF 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 landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- 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;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 9:44 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord was 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.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that on May 2, 2017 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenants. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's application and evidence. The landlord confirmed receipt of the tenant's Application and evidence. Accordingly, I find the landlord duly served with the tenants' Application and evidence in accordance with sections 88 and 89 of the *Act*.

The landlord provided undisputed testimony that the tenants were personally served with the 10 Day Notice, with an effective date of May 4, 2017, on April 23, 2017. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on April 23, 2017.

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

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Is the landlord entitled to recover the filing fee for this application?

### **Background and Evidence**

The landlord gave undisputed testimony regarding the following facts. This month-to-month tenancy began in August 2015 with monthly rent set at \$850.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$425.00. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice on April 23, 2017 to the tenants, indicating an effective move-out date of May 4, 2017. A copy of the 10 Day Notice was included in

the landlord's evidence. The landlord testified that the tenants have not paid any rent since the 10 Day Notice was issued to the tenants. The landlord testified that the tenants owe \$450.00 for March 2017, and the full \$850.00 rent for the months of April 2017 through to June 2017. The total unpaid rent is \$3,000.00. The landlord is seeking an Order of Possession, as well as a Monetary Order for \$2,675.00 as outlined in the table below and in the landlord's Application:

Item	Amount
Unpaid Rent for March 2017	\$450.00
Unpaid Rent for April 2017	850.00
Unpaid Rent for May 2017	850.00
Unpaid Rent for June 2017	850.00
Recovery of Filing Fee	100.00
Less Security Deposit	-425.00
<b>Total Monetary Order Requested</b>	<b>\$2,675.00</b>

### **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 the tenants, I order the tenants' application dismissed without liberty to reapply.** I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' 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, May 4, 2017. 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.

The landlord provided undisputed evidence that the tenants failed to pay the rent in full for the months of March 2017 through to June 2017. Therefore, I find that the landlord is entitled to \$3,000.00 in arrears for the above period.

The landlord continues to hold the tenants' security deposit in the amount of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenants.

### **Conclusion**

I dismiss the tenants' entire application without leave to reapply.

I grant an Order of Possession to the landlord 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 issue a \$2,675.00 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and utilities and the filing fee, and also allows the landlord to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for March 2017	\$450.00
Unpaid Rent for April 2017	850.00
Unpaid Rent for May 2017	850.00
Unpaid Rent for June 2017	850.00
Recovery of Filing Fee	100.00
Less Security Deposit	-425.00
<b>Total Monetary Order</b>	<b>\$2,675.00</b>

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 6, 2017

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Residential Tenancy Branch