



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WILDWOOD RANCHES & KAREN FRASER  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

LANDLORD: OPR, MNR  
TENANT: CNR LRE, O, OLC, RP

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession and a monetary order for unpaid rent.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, to restrict the Landlord's right of entry, for the Landlord to comply with the Act, regulations and tenancy agreement, for repairs to the unit and for other considerations.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on June 7, 2017 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery in June, 2017. The Landlord said she received the hearing package on June 26, 2017. As the Landlord received the Tenants' hearing package and had time to review it I will accept service of the Tenants' hearing package even though the Tenants did not service the package in accordance to section 89 of the Act.

At the start of the conference call it was noted that the Tenants' application did not meet the time requirements of the Act to dispute a Notice End Tenancy. The 10 Day Notice to End Tenancy for Unpaid Rent dated May 21, 2017 was received by the Tenants on May 21, 2017 and is deemed to be served 3 days later or May 23, 2017. Under the Act a tenant has 5 days from receiving a Notice to End Tenancy to make an application to dispute the Notice. In this case the application should have been made by May 28, 2017. May 28, 2017 was a Sunday so the Tenants had until May 29, 2017 to complete their application to dispute the Notice to End Tenancy. The Tenants filed their application on May 31, 2017 which is two days after the dead line to file and application. On page two of the Notice to End Tenancy it states that if the tenant does not filing within the 5 day time limit the tenant is presumed to have accepted the tenancy has ended and the tenant has to move out on the effective vacancy date on the Notice. The effective vacancy date on the Notice is May 31, 2017. Further page two of the Notice says the Arbitrator can extend the time for a tenant to make the application if there is a serious and compelling reason for not filing the application on time. The Tenants said they were told the week end did not count as days to make the application. I do not accept the Tenants' reason as

even counting the weekend the application should have been filed by May 30, 2017. Therefore I dismiss the Tenant's application to dispute the Notice to End Tenancy for Unpaid Rent dated May 21, 2017 due to late filing of the Tenants' application.

Further as the tenancy is end the remaining issues in the Tenants' application are issues only if the tenancy was to continue; therefore I dismiss the balance of the Tenants' application as the tenancy is ending.

The conference call continued hearing only the Landlord's application.

#### Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

#### Background and Evidence

This tenancy started on November 1, 2016 as a month to month tenancy. Rent is \$500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Landlord said the Tenants paid a security deposit of \$250.00 and although a pet deposit was agreed to the pet deposit was not paid. A condition inspection report was completed but not signed by the parties.

The Landlord said that the Tenants have not paid rent since February 28, 2017. The Landlord continued to say the 10 Day Notice to End Tenancy for unpaid rent date May 21, 2017 is for \$1,445.00 and the Tenants have not paid the June, 2017 rent in the amount of \$500.00 and the July, 2017 rent in the amount of \$500.00. The Landlord said her total claim for unpaid rent is \$2,445.00.

The Tenants said they have paid the rent and they submitted rent receipts for November, 2016 and January through to June, 2017. The Tenant continued to say they tried to pay the July, 2017 rent and the Landlord would not accept it. The Tenants said they have paid the rent and they only owe the July, 2017 rent of \$500.00.

The Landlord said the rent has not been paid and she did not issue the rent receipts the Tenants submitted. The Landlord said the receipts are false and the Tenants copied her signature from a previous receipt. The Landlord said she would not have issued 10 Day Notices to End Tenancy for Unpaid Rent in March, April and May, 2017 if the rent was paid. The Landlord submitted the previous 10 Day Notices to End Tenancy for Unpaid Rent to support her position the rent was not paid and the Tenants forged the rent receipts.

The Tenants said they paid the rent and they did not forge the rent receipts. Further the female Tenant said the Landlord forged her signature on the tenancy agreement.

The Tenant said in closing that they made a previous application which was cancelled and they are concerned that the evidence sent in for that application is not in this file.

The Arbitrator told the Tenants that evidence is not moved forward from one file to a new applications and each application is reviewed on the evidence sent in for that application.

The Landlord had no further comments for her closing remarks.

### Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Given that the Landlord issued 10 Day Notices to End Tenancy for Unpaid Rent in March, April and May, 2017, I accept the Landlord's testimony and evidence that the rent was not paid after February 28, 2017. Consequently, I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$2,445.00 for March, April, May, June and July, 2017. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$2,445.00.

Further as the Tenants application has been dismissed due to late filing; I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,445.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply.

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: July 19, 2017

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Residential Tenancy Branch