



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR OPR CNR MT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities.

The tenants applied for:

- more time to dispute a landlord's notice to end tenancy pursuant to section 66; and
- a cancellation of the landlord's notice to end tenancy pursuant to section 55.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was given to the tenant B.P). in person on June 14, 2017. Pursuant sections 88 & 90 of the *Act*, the tenants are found to have been served with the 10 Day Notice on June 14, 2017.

Following introductory remarks, the landlord asked if she could amend her application to include unpaid rent of \$1,650.00 for the month of August 2017. She informed that the tenants were still in occupation of the rental unit and she did not know when they would vacate the rental property. Pursuant to section 64 of the *Act* I amend the landlord's application to reflect this request.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and an Order of Possession for unpaid rent?

Can the tenants cancel the landlord's application for an Order of Possession?

Should the tenants' be granted More Time to file their application?

Background and Evidence

The landlord provided undisputed testimony that the tenants signed a fixed-term tenancy on March 1, 2017. This tenancy was set to expire on September 1, 2017. Rent was \$1,650.00 per month and a security deposit of \$825.00 continues to be held by the landlord.

The landlord explained that she sought an Order of Possession and a Monetary Order based on unpaid rent for the months of June, July and August 2017. The landlord stated that on June 22, 2017 the tenants paid \$900.00 and then on July 31, 2017 they paid \$1,650.00. The landlord said that despite these payments the tenants still owe \$2,400.00.

The landlord is seeking a Monetary Order of \$2,400.00 based on the following unpaid rent:

Item	Amount
Unpaid rent for June 2017	\$1,650.00
Unpaid rent for July 2017	\$1,650.00
Unpaid rent for August 2017	\$1,650.00
Less amount paid on June 22, 2017	(-900.00)
Less amount paid on July 31, 2017	(-1,650.00)
<b>Total =</b>	2,400.00

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice; however they have failed to attend the hearing and are therefore conclusively presumed under the *Act* to have accepted this notice to end tenancy. In accordance with section 46 of the *Act*, the tenants' failure to pay the rent or attend the hearing led to the end of their tenancy on the effective date of the 10 Day notice. In this case, this required the tenants to vacate the premises by June 24, 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 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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.

The landlord testified that only partial rent for June, July or August 2017 has been paid. The landlord stated that on June 22, 2017 she received a payment of \$900.00 from the tenants. On July 31, 2017 she received a further payment of \$1,650.00. Despite these payments, \$2,400.00 in rent remains unpaid.

As the tenants failed to attend the hearing to provide testimony or evidence to this matter, the landlord is entitled under section 67 of the *Act* to a Monetary Order for the rent which remains outstanding for the months of June, July and August 2017.

While the landlord has not applied to retain the tenants' security deposit, using the offsetting provisions contained in section 72 of the *Act* I allow the landlord to retain the tenants \$825.00 security deposit.

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 section 67 of the *Act* for \$1,575.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for June 2017	\$1,650.00
Unpaid rent for July 2017	\$1,650.00
Unpaid rent for August 2017	\$1,650.00
Less amount paid on June 22, 2017	(-900.00)
Less amount paid on July 31, 2017	(-1,650.00)
Less Security Deposit	(-825.00)
<b>Total =</b>	<b>\$1,575.00</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: August 3, 2017

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Residential Tenancy Branch