



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause and/or for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlord, G.S. (the landlords) attended the hearing via conference call and provided affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlords provided undisputed affirmed evidence that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 19, 2017. I accept the undisputed affirmed evidence of the landlords and find that the tenants have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlords provided undisputed affirmed evidence that this tenancy began sometime in November of 2004 on a month-to-month basis. The current monthly rent is \$800.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$350.00 was paid in November 2004. The landlords stated that there are no signed tenancy agreement and no paper records for the tenancy (ie. Tenant Ledger).

The landlords seek an order of possession as a result of a 1 Month Notice issued for Cause and for Unpaid Rent. The landlords also seek a monetary order for unpaid rent of \$2,400.00.

The landlords provided undisputed affirmed evidence that the tenants were served with the 1 Month Notice dated June 1, 2017 on June 2, 2017. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent.

Based upon the undisputed affirmed evidence of the landlord that the 1 Month Notice was served in person on June 2, 2017, I find that the effective end of tenancy date is incorrect and correct it to July 30, 2017 as the tenants were served past the day when rent was due, which is the 1<sup>st</sup> day of each month. This allows the 1 Month Notice to be an effective "1 Month Notice".

The landlords provided undisputed affirmed testimony that the tenants have been routinely late paying rent and have provided the following instances when the tenants were late paying rent.

January 2017 Rent Paid on January 10, 2017  
February 2017 Rent Paid on February 12, 2017  
March 2017 Rent Paid on March 26, 2017  
April 2017 Rent Paid on May 7, 2017

The landlords also provided undisputed affirmed evidence that the tenants were served with the 10 Day Notice dated June 9, 2017 on June 19, 2017. The 10 Day Notice sets out an effective end of tenancy date of June 19, 2017 and that the tenants failed to pay rent of \$2,400.00 that was due on June 1, 2017. The landlords clarified and confirmed in their direct testimony that the 10 Day Notice was served in person on June 19, 2017 as opposed to the June 9, 2017 date on the 10 Day Notice and the September 19, 2017 date on the Proof of Service Document. The landlords stated that this was a clerical error on their part.

Based upon the undisputed affirmed evidence of the landlord that the 10 Day Notice was served in person on June 19, 2017, I find that the effective end of tenancy date is incorrect and correct it to June 29, 2017 as the tenants were served on June 19, 2017 as per the landlords' direct testimony. This allows the 10 Day Notice to be an effective on June 29, 2017 following service on June 19, 2017.

The landlords clarified that the tenants failed to pay rent of \$800.00 per month for April 2017, May 2017 and June 2017 for total of \$2,400.00. The landlords provided undisputed affirmed evidence that the tenants have failed to pay any rent since being served with this notice.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed affirmed evidence of the landlords and find that the tenants were served with the 1 Month Notice dated June 1, 2017 in person on June 2, 2017. I also accept the undisputed affirmed evidence of the landlords that the tenants have been repeatedly late paying rent for the 4 months (January to May 2017) as claimed. As such, the landlords have established a claim to end the tenancy as per the 1 Month Notice dated June 1, 2017 for repeatedly late payment of rent.

On the landlords claim for unpaid rent, I accept the undisputed affirmed evidence of the landlords that the tenants were served with the 10 Day Notice dated June 9, 2017 on June 19, 2017 in person. I also accept the undisputed affirmed evidence of the landlords that the tenants have failed to pay rent of \$800.00 per month for the 3 month period (April to June 2017) as claimed.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by June 29, 2017 the corrected end of

tenancy date. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

The landlord has provided uncontested affirmed evidence that the tenants have unpaid rental arrears totaling \$2,400.00. I find that the landlords have proven their entitlement to the rental arrears. The landlord is entitled to a monetary order for the unpaid rent of \$2,400.00.

The landlords testified that they continue to hold the tenants' \$362.39 (\$350.00 security deposit, plus interest (\$12.39), paid in November 2014. Using the offsetting provisions of section 72 of the Act, I allow the landlords to retain the security deposit and interest in partial satisfaction of the monetary award.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

#### Conclusion

The landlords are granted an order of possession (based upon both notice(s) to end). The landlords are granted a monetary order for \$2,137.61.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 17, 2017

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Residential Tenancy Branch