



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF, LRE, MNDC, MNSD, O, OLC, RP, RR

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 landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; ; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlords attended the hearing by way of conference call, the tenant did not. I waited until 11:15 a.m. to enable the tenant to participate in this scheduled hearing for

11:00 a.m. The landlords were 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.

The landlord gave sworn testimony that on July 23, 2017 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenant in the presence of a police officer. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlords' application and evidence.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice, with a corrected effective date of July 25, 2017, on July 15, 2017 by way of serving the tenant personally in the presence of a witness. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on July 15, 2017.

As the tenants chose not to participate in this hearing, I dismiss their application in its entirety without leave to reapply.

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

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?  
Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?  
Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?  
Are the landlords entitled to recover the filing fee for this application?

### **Background and Evidence**

The landlord gave undisputed testimony regarding the following facts. This tenancy began on May 1, 2017, with monthly rent set at \$2,850.00, payable on the first of each

month. The landlords collected, and still hold, a security deposit of \$425.00. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice on July 15, 2017 to the tenant, indicating an effective move-out date of July 25, 2017. A copy of the 10 Day Notice was included in the landlord's evidence. The landlords testified that the tenants have not paid any rent since the 10 Day Notice was issued to the tenants.

The landlords are seeking an Order of Possession, as well as a Monetary Order for \$11325.00 as outlined in the table below and in the landlords' Application:

| Item                                  | Amount            |
|---------------------------------------|-------------------|
| Unpaid Rent for June and July 2017    | \$3100.00         |
| Unpaid Rent for August 2017           | 2850.00           |
| Unpaid Rent for September 2017        | 2850.00           |
| Unpaid Rent for October 2017          | 2850.00           |
| Recovery of Filing Fee                | 100.00            |
| Less Security Deposit                 | -425.00           |
| <b>Total Monetary Order Requested</b> | <b>\$11325.00</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 tenant, I order the tenant's 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 tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, July 25, 2017. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided undisputed evidence that the tenant failed to pay the rent in full for the months of June 2017 through to October 2017. Therefore, I find that the landlords are entitled to \$11650.00 in arrears for the above period.

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

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

### **Conclusion**

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

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenant 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 \$11325.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and the filing fee, and also allows the landlords to retain the tenant's security deposit:

| <b>Item</b>                        | <b>Amount</b> |
|------------------------------------|---------------|
| Unpaid Rent for June and July 2017 | \$3100.00     |
| Unpaid Rent for August 2017        | 2850.00       |
| Unpaid Rent for September 2017     | 2850.00       |
| Unpaid Rent for October 2017       | 2850.00       |
| Recovery of Filing Fee             | 100.00        |

|                                       |                   |
|---------------------------------------|-------------------|
| Less Security Deposit                 | -425.00           |
| <b>Total Monetary Order Requested</b> | <b>\$11325.00</b> |

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 03, 2017

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Residential Tenancy Branch