



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: OPR MNR MNSD FF  
For the tenants: CNR MNSD OLC

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain the tenant’s security deposit and pet damage deposit, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 16, 2016 (the “10 Day Notice”), for the return of their security deposit and pet damage deposit, and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

The landlord, another representative of the landlord, and the tenants attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties testified that they did not serve the other party with their documentary evidence and as a result, all documentary evidence was excluded as it was not served in accordance with the Rules of Procedure.

### Preliminary and Procedural Matters

As the landlord did not name the male tenant in their application, I find that only the female tenant will be named on any respective orders as a result. I note that while an order of possession applies to the tenant and all occupants of the rental unit, the monetary order will only name the female tenant who was the only person named on the landlord's Application.

In addition to the above, during the hearing the landlord requested loss of rent for August, September and October of 2017. While I find that a claim for loss of October 2017 rent is premature as October 2017 rent would not be due until October 15, 2017, I amend the landlord's application pursuant to section 64(3) of the *Act* for loss of August and September 2017 rent at \$1,350.00 for each month as I find the tenants would know or ought to know that monthly rent is due on the 15<sup>th</sup> day of each month.

#### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is continuing, is the tenants' application for the return of their security deposit and pet damage deposit premature?
- If the tenancy is continuing, are the tenants entitled to an order directing the landlord to comply with the *Act*, regulation or tenancy agreement?

#### Background and Evidence

The parties agreed that a month to month tenancy began in July 2017. The parties disputed the exact start date of the tenancy with the landlord stating the tenancy agreement indicates that the tenancy began on July 15, 2017 while the tenants stated that the tenancy began on July 4, 2017. The parties agreed that monthly rent of \$1,350.00 is due on the 15<sup>th</sup> day of each month. The parties confirmed that the tenants paid a \$675.00 security deposit and a \$250.00 pet damage deposit for a total of \$925.00 in combined deposits (the "combined deposits") at the start of the tenancy which the landlord continues to hold.

The tenants stated that while they thought their deposits were meant to be applied towards the monthly rent, the tenants did confirm that no rent has been paid since receiving the 10 Day Notice dated July 16, 2017 the following day on July 17, 2017.

The tenants confirmed that no rent for July, August or September 2017 has been paid and that they continue to occupy the rental unit. The effective vacancy date listed on the 10 Day Notice was July 26, 2017 which automatically corrects to July 27, 2017 pursuant to section 53 of the *Act* as the tenants confirmed not receiving the 10 Day Notice until July 17, 2017. Although the tenants applied to dispute the 10 Day Notice, the tenants confirmed that they did not pay any rent since being served with the 10 Day Notice.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

**10 Day Notice** – Firstly, based on the tenants confirming that they failed to pay July, August and September 2017 rent of \$1,350.00 for each of those three months, I **dismiss** the tenant's Application in full due to insufficient evidence. Section 55 of the *Act* applies and states:

#### **Order of possession for the landlord**

**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.**

[My emphasis added]

As the parties agreed to the content of the 10 Day Notice, I am satisfied that the 10 Day Notice complies with section 52 of the *Act* and I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit without paying rent. The order of possession applies to all occupants of the rental unit. I find the tenancy ended on July 27, 2017 which is the corrected effective vacancy date listed of the 10 Day Notice.

**Unpaid rent and loss of rent** - Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the oral tenancy agreement which the parties agreed required that rent is due monthly on the 15<sup>th</sup> day of each month. The tenant continues to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$4,050.00** as claimed for unpaid rent and loss of rent for the months of July, August and September of 2017.

The landlord is at liberty to apply for loss of October 2017 rent should the tenants fail to vacate before October 15, 2017.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

**Monetary Order** – I find the landlord has established a total monetary claim of **\$4,150.00** comprised of \$4,050.00 owing for unpaid rent and loss of rent plus the recovery of the cost of the \$100.00 filing fee.

Pursuant to section 72 of the *Act*, **I authorize** the landlord to retain the tenants' full security deposit of \$675.00 and \$250.00 pet damage deposit in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$3,225.00**.

I dismiss the remainder of the tenants' application without leave to reapply as the tenancy ended on July 27, 2017 and the tenants have been overholding the rental unit since that date.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application is successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$4,150.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$675.00 and \$250.00 pet damage deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$3,225.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 11, 2017

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Residential Tenancy Branch