



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord - OPR, MNR, MNSD, MNDC  
Tenant - CNR

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

The tenants did not attend this hearing, although I waited until 11:12 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The Translator (the landlord) stated that he would be the primary speaker during the hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of any evidence or submissions from the tenants, I order the Tenants' Application for Dispute Resolution (Tenants' Application) dismissed, without liberty to reapply.**

The landlord testified that the Landlord's Application for Dispute Resolution (the Landlord's Application), and evidentiary package were sent to each tenant by way of registered mail on September 19, 2017. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were deemed served with the Landlord's Application and evidentiary package on September 24, 2017, five days after its mailing.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that the 10 Day Notice was posted to the door of the rental unit at 6:00 p.m. on September 08, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice was deemed served to the tenants on September 11, 2017.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began on April 15, 2017, with a monthly rent of \$2,100.00, due on the first day of the month. The landlord testified that they continue to retain a \$1,050.00 security deposit.

A copy of the signed 10 Day Notice, identifying \$6,300.00 in rent owing for this tenancy and dated September 08, 2017, with an effective date of September 18, 2017, was included in the landlord's evidence.

The landlord testified that the tenants are still in the rental unit and have not made any payments toward the tenancy since the 10 Day Notice was issued.

The Landlord's Application for a monetary award of \$10,533.00 is for the unpaid rent owing for July 2017 to November 2017 and for an August 2017 Utility Charge in the amount of \$33.00.

### Analysis

Section 55(1) of the *Act* reads as follows:

*If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(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.*

I find that the 10 day Notice is in compliance with section 52 of the *Act*. Based on my decision to dismiss the Tenants' Application and in accordance with sections 55(1) and 53(2) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, September 21, 2017. In this case, the tenants and anyone on the premises were required to vacate the premises by September 18, 2017.

As this has not occurred and I have dismissed the Tenants' Application to dispute the 10 Day Notice, I find that the landlord is entitled to a two (2) day Order of Possession.

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.

Based on the written evidence and undisputed affirmed testimony, I find that the landlord is entitled to a monetary award of \$10,533.00 for an August 2017 Utility Charge in the amount of \$33.00 and for unpaid rent owing for this tenancy for July 2017, August 2017, September 2017, October 2017 and November 2017.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I also allow them to recover their filing fee from the tenant.

### Conclusion

I dismiss the Tenants' Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or any occupant 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee:

Item	Amount
Unpaid July 2017 Rent	\$2,100.00
Unpaid August 2017 Rent	2,100.00
Unpaid August Utility Bill	33.00
Unpaid September 2017 Rent	2,100.00
Unpaid October 2017 Rent	2,100.00
Unpaid November 2017 Rent	2,100.00
Less Security Deposit	-1,050.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$9,583.00</b>

The landlord is provided with this Order in the above terms and 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 Orders 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: November 09, 2017

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Residential Tenancy Branch