



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR MNR FF  
Tenant: CNR ERP MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on October 20, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 25, 2017 (the “10 Day Notice”); and
- a monetary order for unpaid rent or utilities.

The Tenants’ Application for Dispute Resolution was made on October 3, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling the 10 Day Notice;
- an order that the Landlord reimburse the Tenants for emergency repairs made during the tenancy;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by A.W., an agent. The Tenants were represented at the hearing by H.P. Both in attendance provided affirmed testimony.

On behalf of the Landlord, A.W. confirmed the Landlord’s Application package was served on the Tenants by registered mail on October 29, 2017. A Canada Post registered mail receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlord’s Application package is deemed to have been received on November 3, 2017.

On behalf of the Tenants, H.P. testified the Landlord was served with the Tenants’ Application package by registered mail on October 3, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the

Tenants' Application package is deemed to have been received by the Landlord on October 8, 2017.

No issues were raised with respect to service or receipt of the above documents. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written 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.

### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the all but the Landlord's Application to end the tenancy based on the 10 Day Notice and their monetary claim for unpaid rent, and the Tenants' Application to cancel the 10 Day Notice. The Tenants are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Are the Tenants entitled to an order cancelling the notices to end tenancy for unpaid rent or utilities?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the fixed-term tenancy began on March 6, 2017, and was to end on March 6, 2018. Rent in the amount of \$2,500.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,250.00, which the Landlord holds.

The Landlord testified the Tenants did not pay rent when due on July 1, August 1, and September 1, 2017. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenants by registered mail on September 26, 2017. Tracking information submitted by the Landlord confirms receipt of the 10 Day Notice on September 28, 2017. The Tenants' Application also acknowledged receipt of the 10 Day Notice on that date. At that time, rent in the amount of \$7,500.00 was outstanding.

In addition, A.W. testified that rent was not paid when due on October 1, November 1, and December 1, 2017, and that no partial payments have been received. Accordingly, as of the date of this hearing, rent in the amount of \$15,000.00 remains outstanding.

In reply, H.P. acknowledged that rent has not been paid as claimed. However, he cited difficulties determining ownership of the rental property, repairs that have not been completed by the Landlord, and a request by the Landlord to pay strata fees. The Tenant testified that he could pay outstanding rent by January 2, 2018.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy for unpaid rent or utilities. A tenant has five days after receipt of a notice to end tenancy for unpaid rent or utilities to either pay rent in full or dispute the notice by filing an application for dispute resolution.

In this case, A.W. testified, and I find, that the 10 Day Notice was served on the Tenants by registered mail on September 26, 2017. Canada Post tracking information, and the Tenants' Application, confirmed the 10 Day Notice was received by the Tenants on September 28, 2017.

Although the Tenant disputed the 10 Day Notice, he acknowledged that rent has not been paid as claimed by the Landlord and expressed a willingness to pay outstanding rent in full.

I find that rent has not been paid when due and that \$15,000.00 is currently outstanding. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants. Further, in accordance with section 67 of the *Act*, I find the Landlord is also entitled to a monetary order in the amount of \$15,100.00, which is comprised of \$15,000.00 in unpaid rent and \$100.00 in recovery of the filing fee paid to make the Landlord's Application.

The Tenants' Application is dismissed, subject to the exercise of my discretion described under *Preliminary and Procedural Matters*, above.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$15,100.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' Application is dismissed, subject to the exercise of my discretion described under *Preliminary and Procedural Matters*, above.

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: December 13, 2017

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Residential Tenancy Branch