



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      FFL, MNRL, OPRF

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$8325 for unpaid rent and damages
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy dated August 28, 2017 was sufficiently served on the Tenants by posting on August 28, 2017. I find that the 10 day Notice to End Tenancy was personally served on the Tenants on December 13, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants by mailing, by registered mail to where they reside on December 8, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in August 2016. There does not appear to be a written tenancy agreement. The tenant testified she lives in a motorhome parked in the yard and that her rent was \$300 per month. There are 3 other tenants. I find that the rent was \$1350 per month payable in advance on the first day of the month for the rental of the house

and surrounding property. The tenant failed to prove the landlord agreed to enter into separate tenancy agreements with each tenant. It is unclear whether the tenants paid a security deposit and if so how much.

The tenants failed to pay the rent and the sum of \$8325 remains outstanding to the end of December.

However, the landlord's application that was set for December 5, 2017 was dismissed without leave to re-apply and the 10 day Notice to End Tenancy dated August 28, 2017 was cancelled as the landlord failed to appear.

The tenants continue to reside in the rental unit.

Analysis - Order of Possession:

The tenant who appeared acknowledged she has not paid the rent for October, November and December 2017. She testified she instructed the Ministry to withhold the payment of the rent because the landlord cut the power to the rental unit. Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant does not have a legal right to withhold the rent in a situation such as this unless they have first obtained an order from an arbitrator permitting them to do so.

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. **The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired.** In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I determined that as the landlord is not entitled to their claim for non-payment of rent to the end of November as that claim was dismissed without leave to re-apply in the December 5, 2017 hearing. However, I determined the landlord is entitled to make a claim for the non-payment of the rent for December.

I determined the tenants have failed to pay the rent for the month(s) of December 2017 and the sum of \$1350 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$1350 plus the sum of \$100 in respect of the filing fee for a total of \$1450.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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: January 04, 2018

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Residential Tenancy Branch