



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR MNR FF  
Tenants: CNR MNDC RR 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 December 5, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on November 14, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing in person. The Tenants were both represented at the hearing by G.D.V. All in attendance provided a solemn affirmation.

The parties in attendance each confirmed they had received the other's Application package and documentary evidence. Accordingly, pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the documents upon which they intended to rely.

The parties in attendance were provided with a full 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 and to which I was referred. 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 all but the Landlords' 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. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Are the Tenants entitled to an order cancelling the 10 Day Notice?
5. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed the tenancy began in 2012. However, the current terms were reflected in a written fixed-term tenancy agreement for the period from March 1, 2017, to the last day of February, 2018. Rent in the amount of \$1,490.00 per month is due on the first day of each month. The parties confirmed the Tenants paid a security deposit of \$650.00 and a pet damage deposit of \$250.00, which the Landlord holds.

The Landlord testified rent has not been paid for November 2017. He acknowledged rent was paid when due on November 1, 2017. However, based on the testimony and evidence of both parties, it appears the Landlord mistakenly deposited a second “replacement” rent cheque on November 2, 2017. However, when the second cheque was returned as having insufficient funds, the Tenants incurred some bank charges.

According to the Landlord, the Tenants approached him about the financial impact of inadvertently depositing the second cheque. As a result, and believing without confirming with his bank that he had collected rent twice, he obtained a bank draft, payable to B.D.V., in the amount of \$1,490.00. The Landlord testified that he provided the bank draft to the Tenants with a hand-written letter dated November 3, 2017, which stated:

*This money draft can be cashed in any bank in Canada. Draft for \$1,490.-  
Nov. rent enclosed as rent was paid twice.*

[Reproduced as written.]

On behalf of the Tenants, G.D.V. denied receipt of the bank draft. As rent was not repaid to the Landlord, he issued the 10 Day Notice, which was served on the Tenants in person on November 10, 2017. On behalf of the Tenants, G.D.V. confirmed receipt on that date. In further support of service, the Landlord submitted a copy of the 10 Day Notice and a Proof of Service form into evidence.

The November 3 letter was followed up by a subsequent hand-written letter, dated November 19, 2017, which stated:

*I had also sent you on November 3, 2018 [sic] a bank draft for  
\$1,490...made out to your son...*

[Reproduced as written.]

The Landlord submitted copies of the bank draft and hand-written letters dated November 3 and 19, 2017, into evidence.

On behalf of the Tenants, G.D.V. denied the Tenants received bank draft, claimed rent was paid when due on November 1, 2017, and asserted that no further rent payments are due.

### Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

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, the Tenants' evidence confirms, and I find, that rent was initially paid when due on November 1, 2017. However, I also find it is more likely than not that the Landlord, erroneously believing rent had been paid twice, reimbursed the Tenants for the perceived overpayment by providing them with a bank draft of \$1,490.00, payable to B.D.V. These findings are supported by the hand-written letters and bank draft made out to B.V.D. Accordingly, I find it is more likely than not that the two payments cancelled each other out and that the Tenants have not paid rent for November 2017. Further, the Tenants have continued to refuse to pay rent, even after receipt of the 10 Day Notice. Accordingly, pursuant to section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

In addition, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,590.00, which is comprised of \$1,490.00 for unpaid rent and \$100.00 in recovery of the filing fee.

Subject to the exercise of my discretion referred to under *Preliminary and Procedural Matters*, above, the Tenants' Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

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 in the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,590.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Subject to the exercise of my discretion referred to under Preliminary and Procedural Matters, above, the Tenants' Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

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: February 1, 2018

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Residential Tenancy Branch