



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, CNR, OLC, AAT

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant SP (the tenant) confirmed that the tenants were handed the landlord's 10 Day Notice on January 3, 2018, I find that this Notice was duly served to the tenants in accordance with section 88 of the *Act* on that day.

As the landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail near the end of January 2018, I find that the landlord was duly served with that package in accordance with section 89 of the *Act*. The tenants also confirmed that they received a copy of the landlords' dispute resolution hearing package and written evidence package posted on their door on February 2, 2018. I find that the landlord's written evidence package was duly served to the tenant in accordance with section 88 of the *Act* and that the landlord's

application for an Order of Possession was served in accordance with section 89(2) of the *Act*. I find that the landlord's dispute resolution hearing package seeking a monetary award of \$2,070.00 was sufficiently served to the tenants in accordance with paragraph 71(2)(c) of the *Act*.

At the commencement of the hearing, the landlord revised the amount of the monetary award they were seeking by reducing it from \$2,070.00 to \$2,050.00, to reflect a \$20.00 payment the tenants had made during the previous week. The amount of the requested monetary award is reduced accordingly.

#### Preliminary Matter –Request for an Adjournment of this Hearing

At the commencement of the hearing, the tenant requested an adjournment of this hearing as they had been in a motor vehicle accident the previous day, and felt that they had not been able to properly prepare for and send evidence to support their position as a result of this accident.

Rule 6.3 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure applies to such late requests for an adjournment of a scheduled hearing:

#### ***6.3 Adjournment after the dispute resolution proceeding commences***

*At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*

*(a) the oral or written submissions of the parties;*

*(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*

*c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*

*(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*

*(e) the possible prejudice to each party...*

At the hearing, I provided both parties with opportunities to speak to the tenant's request for an adjournment. The landlord said that this matter has been delayed to the point where she is continuing to lose rent and needs to make arrangements for new tenants for this rental unit, tenants who will pay the monthly rent established. The tenant said that she was willing to proceed with the hearing.

In deciding that there would be possible prejudice to the landlord from additional unpaid rent, I also note that a motor vehicle accident that occurred shortly before this hearing would have had no bearing on the tenants' preparation of written evidence that needed to be submitted at least 14 days before this hearing, but was not. As such, I proceeded to hear these applications on the basis that the tenant's request for an adjournment failed under Rule 6.4(d) and (e) of the RTB's Rules of Procedure.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Should any other orders be issued with respect to this tenancy?

#### Background and Evidence

The parties signed a one-year fixed term tenancy agreement for this rental unit in a strata building on September 29, 2017, for a tenancy that is to run from October 1, 2017 until October 1, 2018. Monthly rent is set at \$1,400.00, payable in advance on the first of each month. The landlord continues to hold a \$700.00 security deposit paid near the beginning of this tenancy.

After there had been a number of late payments of rent since this tenancy began, the tenants made arrangements whereby the Ministry of Social Development and Poverty Reduction (the Ministry) would make shelter payments on the tenants' behalf directly to the landlord. The landlord testified that she received payments for two month's rent

from the Ministry, but these payments ceased in February 2018. Although it was somewhat confusing to follow the exact path of the payments made and owing, the tenant did not dispute the landlord's claim that \$690.00 was received by January 4, 2018, after the landlord issued the 10 Day Notice identifying \$1,360.00 as owing as of January 2, 2018. With the payment of \$690.00, the tenant agreed that \$670.00 remained owing for January 2018 and \$1,400.00 has not been paid for February 2018. The parties agreed that the only payments made towards this tenancy since January 4, 2018 has been a \$20.00 payment made by the tenants shortly before this hearing. The tenant agreed that \$2,050.00 remained owing to the landlord as of the date of this hearing.

The tenants presented undisputed evidence, supported by written evidence from the landlord, that Tenant RA lost his fob key, which allowed him access to the rental unit and the strata building in early January 2018. When this fob key was returned to the landlord by representatives of the strata building, the landlord refused to forward this key to the tenants. In doing so, she maintained that she would return it once the tenants paid all of their outstanding rent and a pet damage deposit that she was demanding. As of the date of this hearing, the landlord had not yet returned this key to the tenants, reducing them to one key between the two tenants of this rental unit. The tenants asserted that this refusal to return one of their keys had led to disruption to their activities and their tenancy.

### Analysis

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 26(1) of the *Act* establishes that "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."

In this case, I find that the tenants failed to pay all of the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. Although the tenants were apologetic for the circumstances that had led to their failure to pay their rent and were interested in continuing their tenancy into March 2018, their failure to pay all of their outstanding rent within five days of receiving the landlord's 10 Day Notice leads me to find that this tenancy is to end on the basis of that Notice. I find that the landlord is

entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

In this case, there is undisputed testimony from the landlord and the tenant that a total of \$2,050.00 in rent remains outstanding. In considering this matter, I must also consider the wording of section 26(3) of the *Act*, which reads in part as follows:

***Rules about payment and non-payment of rent***

**26** (3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

The tenants provided undisputed sworn testimony, supported by the landlord's sworn testimony and written evidence, that the landlord has withheld a key fob, which was lost by Tenant RA and returned to the landlord by representatives of the strata. While the landlord believed that her issuance of the 10 Day Notice to the tenants enabled her to withhold the return the key fob allowing Tenant RA access to the rental property, I find that this is in contravention of section 26(3) of the *Act*.

As this tenancy is ending and to facilitate the orderly process of the tenants removal of their belongings from the rental unit, I order the landlord to return Tenant RA's key fob

to him so that he has access to the rental property for the remaining days of this tenancy. I make this order pursuant to section 62 of the *Act*.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” As I find the landlord’s actions in withholding Tenant RA’s key fob from him after January 4, 2018 contravened the *Act*, I find that the landlord has reduced the value of the tenancy agreement by restricting the tenants to the use of one key and key fob to enter this strata building and their rental unit. As this situation has continued for almost two months, I find that the tenants have suffered a loss in the value of their tenancy of 10% for each of these two months. As such, I reduce the value of the monetary award issued in the landlord’s favour by \$140.00 for each of January and February 2018, resulting in an overall reduction in the amount of unpaid rent owing to the landlord by a total of \$280.00.

Although the landlord’s application does not seek to retain the tenant’s security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants’ \$700.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I dismiss the tenants’ application to cancel the landlord’s 10 Day Notice. I allow the landlord’s application to obtain an Order of Possession, which is to take effect **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord’s favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenants’ security deposit, less the amount of the loss in value of this tenancy for the months of January and February 2018:

Item	Amount
Unpaid January 2018 Rent (\$670.00 - \$20.00 paid by tenants in Feb. 2018 =	\$650.00

\$650.00)	
Unpaid February 2018 Rent	1,400.00
Less 2 Months of Loss in Value of Tenancy Agreement (2 months @ \$140.00 = \$280.00)	-280.00
Less Security Deposit	-700.00
<b>Total Monetary Order</b>	<b>\$1,070.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I order the landlord to return Tenant RA's key fob to him immediately to enable him to restore access to the rental suite and the strata building for the remaining days of this tenancy.

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 23, 2018

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Residential Tenancy Branch