



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: OPR, OPC, MNR, MNDC, MND, FF  
TENANTS: CNR, CNC, OLC, MT, FF

### Preliminary matters

At the start of the Hearing the Arbitrator informed the Parties that the hearing will deal with the Landlord's application to end the tenancy, the Landlord's monetary claim for unpaid rent and the Tenant's application to dispute the Notices to End Tenancy. The Landlord's applications for compensation for damage to the unit, site or property and compensation for loss or damage under the Act, regulations or tenancy agreement are dismissed with leave to reapply. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) an Arbitrator may dismiss unrelated disputes within an application. The Landlord's applications for monetary compensation for damage to the unit, site or property and for or loss or damage under the Act, regulations or tenancy agreement are unrelated issues to whether the tenancy continues or not therefore these items are dismissed with leave to reapply.

### Introduction

This hearing dealt with four cross applications for Dispute Resolution 2 filed by the Landlord and 2 filed by both the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail in accordance with section 89 of the Act. The Tenant said he did not receive the Landlord's registered mail packages. The Landlord provided tracking numbers from Canada Post to support the service of the documents.

The Tenant said he served the Landlord the Tenants' hearing documents by registered mail and by personal delivery to the Landlord's Agent. The Landlord said he did not receive and hearing packages from the Tenants. The Tenant did not provide any proof of service of the hearing documents to the Landlord. I find the Tenant has not proven service of the Tenants' hearing package to the Landlord.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy and receive an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notices to End Tenancy?

### Background and Evidence

This tenancy started on October 6, 2017 as a one year fixed term tenancy with an expiry date of October 5, 2018. Rent is \$1,950.00 per month payable on the 6<sup>th</sup> of the month. The Tenant said they paid a security deposit of \$975.00 and a pet deposit of \$975.00 on October 4, 2017. A move in condition inspection report was completed on October 19, 2017.

The Landlord said that the Tenant did not pay \$1,950.00 for April 2018 and has been late with the rent payments on January 7, 2018, March 9, 2018, April's rent was paid on May 10, 2018 and May 2018 rent was paid May 11, 2018. The Landlord submitted a list of dates showing late rent payments. The Tenant agreed the rent has been late on a number of occasions but the Tenant said the rent has always been paid and he has paid the full rent up to May 31, 2018. The Tenant said he has been late with the rent in March, April and May, 2018. The Tenant was not sure about the January 2018 rent payment. The Landlord said this shows the Tenant was late 4 times with the rent and this is the reason the Landlord issued the 1 Month Notice to End Tenancy for Cause dated April 9, 2018. The Landlord said the One Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid both dated April 9, 2018 were both posted on the Tenants door on April 9, 2018. The Tenant said he received both Notices to End Tenancy. The Landlord continued to say that the Tenants paid the rent within the 5 days required by the 10 Day Notice to End Tenancy for Unpaid rent dated April 9, 2018. So the 10 Day Notice to End Tenancy was satisfied.

The Landlord continued to say that he wants to end the tenancy based on the One Month Notice to End Tenancy for Cause because the Tenant has been late more than three times and that is grounds to end the tenancy.

The Tenant said he made an agreement with the Landlord to re-instate the tenancy when he paid the rent on May 10 and 11, 2018. The Tenant said he has a text message to support this but he did not submit it into evidence.

The Landlord said no arrangement was made to continue the tenancy.

The Tenant said in closing that he has paid the rent and the Landlord doesn't have proof that he was late with his rent payments and the Landlord said he would re-instate the tenancy.

The Landlord said in closing the Tenants have been late with the rent 4 times January 7, March 9, May 10 (for April) and May 11, 2018 for May 2018 and this is grounds to end the tenancy. The Landlord said he wants to end the tenancy as soon as possible.

### Analysis

Section 26 (1) of the Act says 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.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Tenants have paid the overdue rent but the Tenants do not have the right to withhold a part or all of the unpaid rent after the due date of the rent which is the 6<sup>th</sup> of each month. I accept the Landlord's evidence that the Tenant has been late with the rent 4 times January 7, March 9, May 10 (For April rent) and May 10, 2018 for the May 2018 rent. Given that the Tenant said he has been late with the rent on a number of occasions, I accept the Landlord's testimony and evidence that the Tenant has been late with the rent on 4 occasions. I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated April 9, 2018. Consequently I dismiss the Tenants' applications without leave to reapply.

As the Tenants were unsuccessful in this matter I order the Tenants to bear the \$200.00 filing fees which have already been paid.

Further as the Tenant was unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on May 31, 2018.

As the Landlord has been successful in this matter I order the Landlord to recover the filing fee of \$100.00 from the Tenant. The Landlord will receive a monetary order for \$100.00.

### Conclusion

An Order of Possession effective at 1:00 p.m. on May 31, 2018 and a Monetary Order in the amount of \$100.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' applications are 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: May 16, 2018

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Residential Tenancy Branch