



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MT, MNRL-S, OPR, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On April 26, 2018, the Tenants applied for a dispute resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the Act and requesting more time to cancel the Notice pursuant to section 66 of the Act.

On May 7, 2018, the Landlord made an Application for a dispute resolution proceeding seeking the following under the Act, regulation, or tenancy agreement:

- A Monetary Order for unpaid rent pursuant to Section 67 of the Act;
- A request to apply the security deposit towards the unpaid rent pursuant to Section 67 of the Act;
- An Order of Possession of the rental unit pursuant to Sections 46 and 55 of the Act; and
- To recover the filing fee.

Both the Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*?
- Is the Landlord entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*?
- Is the Landlord entitled to apply the security deposit towards the unpaid rent?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on July 1, 2017 as a fixed term for one year and was to convert to a month to month tenancy afterwards. Rent was established at \$2,500.00 per month, due on the first of each month. A security deposit of \$1,250.00 was also paid. The Tenants confirmed these details.

The Landlord confirmed that the Notice was served by hand to the Tenants, but was not certain of the exact date; however, he had the Notice signed by Tenant D.C. Tenant A.D.C. was not sure of the exact date this Notice was served; however, D.C. acknowledged that he signed for receipt of the Notice and that it was served to him by hand on April 17, 2018.

D.C. stated that they were talking to the Landlord about paying the rent; however, there was a dispute over a broken windshield that the Landlord eventually admitted to being responsible for. The Tenants tried to resolve this issue with the Landlord and offered to pay the rent outstanding minus the cost of the broken windshield; however, the Landlord advised the Tenants four days after service of the Notice that he was not willing to accept this offer. The Tenants submitted that they advised the Landlord that they would absorb the cost of the windshield and pay the rent in full, but the Landlord refused to accept rent. They stated that they pay the rent in cash and make arrangements to meet the Landlord; however, they did not know what time or day they tried to pay the rent in full.

The Landlord stated that the Tenants are in arrears for March, April, and May rent, which the Tenants do not dispute. All parties agree that the Tenants have been in arrears in the past but have verbally attempted to work out those past issues; however, the Landlord stated that the Tenants keep getting further behind and he cannot wait any

longer. The Landlord submitted that he never refused rent and advised the Tenants that the rent was owed in full.

The Tenants disputed the Notice by making the Application on April 25, 2018 and requested more time to cancel the Notice. They stated that they made their Application to “buy more time” and that they have secured another rental unit to move to.

The Landlord stated that as of the service of the hearing, rent for March, April, and May 2018 was outstanding for a total of \$7,500.00. The Tenants agreed with these amounts and acknowledged that rent was still outstanding.

### Analysis

Upon consideration of the evidence before me, I will outline the following relevant sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Section 26 of the Act states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the notice. If the Tenants do not do either, the Notice is conclusively presumed to be accepted, the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

During the hearing, the Tenants acknowledged that they had been in arrears before and they worked out these issues with the Landlord verbally. All parties agreed that January and February rent arrears were paid in full. However, recently A.C.D. had encountered some personal difficulties and as well, the Landlord was responsible for breaking the Tenants' car windshield. The Tenants attempted to reason with the Landlord to reduce the cost of the broken windshield from the outstanding rent; however, the Landlord was not agreeable to this proposed arrangement. As this reason for withholding the rent does not fall within the allowable grounds pursuant to the Act, as the consistent evidence is that the Notice was served on April 17, 2017 by hand, and as the Tenants

were not sure what date they attempted to pay the rent in full to the Landlord, I am not satisfied that it is likely that the Tenants attempted to pay the rent in full within the five-day time frame allowable under the Act. Furthermore, even if the Tenants attempted to pay the rent on April 22, 2018, of which I am not satisfied of, there is no reliable evidence before me that the Landlord refused to accept the rent.

With respect to the Tenant's request for more time to make the Application to cancel the Notice, as the Tenants stated that the reason they disputed the Notice was to "buy more time", I do not find this to be an extenuating circumstance which would grant the Tenants an extension of the applicable time limits under the legislation.

As the evidence is that the rent was not paid in full when it was due, and that the Tenants did not meet any of the applicable criteria that authorized them to withhold the rent under the Act, I dismiss the Tenant's Application. I find that the Landlord's Notice is valid and therefore, the Landlord is entitled to an Order of Possession and a Monetary Order. In the hearing, the Landlord requested that his application be amended to include the outstanding rent for the month of May 2018 as well. As such, I grant an Order of Possession and a Monetary Order in the amount of \$7,500.00 for rent owing for the months of March, April, and May 2018.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the Act, I allow the Landlord to retain this \$1,250.00 from the security deposit in partial satisfaction of the rent outstanding.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order as follows:

Item	Amount
March 2018 Rent	\$2,500.00
April 2018 Rent	\$2,500.00
May 2018 Rent	\$2,500.00
Recovery of Filing Fee for this application	\$100.00
Security Deposit	-\$1,250.00
<b>Total Monetary Award</b>	<b>\$6,350.00</b>

### Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenants. Should the Tenants fail to

comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of \$6,350.00 in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 28, 2018

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Residential Tenancy Branch