



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SEA FLAME BEACH RESORT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR/FFL/CNR

### Introduction

On May 10, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for unpaid rent, dated May 5, 2018.

On May 17, 2018, the Landlord submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlord requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the Filing Fee. The Landlord’s Application was crossed to be heard with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

### Preliminary Matters

Firstly, this hearing started late due to some technical issues at the Residential Tenancy Branch. Secondly, the sound quality of the conference call was poor, likely due to cell phone reception, and caused some difficulties during the hearing. I want to thank the parties for their patience and willingness to work through these issues.

The Landlord requested to amend their Application to provide the correct spelling of the Tenants’ last name and to include Tenant DZ as a Respondent. During the hearing, I learned that Tenant DZ has been living in the rental unit over the last few months, would be materially affected by the determination of the dispute, and was aware of this upcoming hearing. In accordance with Section 64 of the Act, I find that Tenant DZ should be added as a Respondent in the Landlord’s Application.

Both the Landlord's and the Tenants' Applications relate to a verbal agreement that was established between the parties regarding the rental of a trailer within a resort. In accordance with Section 2 of the Act and assisted by the definition of a "Tenancy Agreement" under the Act, I find that the oral agreement between the Landlord and the Tenants respecting possession of a rental unit, (the trailer), meets the definition of a Tenancy Agreement; therefore, this dispute falls under the jurisdiction of the *Residential Tenancy Act*.

The Landlord's representatives and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the three representatives for the Landlord were in the same room, speaking on the same phone, with poor reception, I will refer to the Landlord evidence below without differentiating between speakers.

### Issues to be Decided

Tenants:

Should the Ten-Day Notice to End Tenancy, dated May 5, 2018, (The "Ten-Day Notice") be canceled?

Landlord:

Should the Landlord receive an Order of Possession for the rental unit?

Should the Landlord receive a Monetary Order for Unpaid rent?

Should the Landlord be reimbursed for the Filing Fee?

### Background and Evidence

During the hearing, the details regarding the tenancy were often conflicting between the Landlord and the Tenants and, because there was no written Tenancy Agreement, were difficult to determine. The Landlord and the Tenants agreed that there was a verbal agreement for the Tenants to move into a trailer (rental unit) within the resort, on December 15, 2018. The Tenants paid \$350.00 for the last half of December and

agreed that the rent would be \$700.00 a month. There was some consensus that the Tenants would pay and had paid the rent in installments throughout the following months and that the rent for January, February and March 2018 was paid in full. The Landlord did not collect a security deposit.

#### Landlord Evidence:

The Landlord testified that a verbal agreement for Tenant GZ to move into one of the trailers and pay rent at the resort was established. The Landlord collected rent for the last half of December 2017 and the first 3 months of 2018.

The Landlord submitted as evidence, a copy of a letter they sent to the Tenants, dated April 16, 2018. In that letter, the Landlord instructed the Tenants to vacate the rental unit on April 18, 2018. The Tenants did not move out of the rental unit.

On May 5, 2018, Landlord DM personally served the Ten-Day Notice to Tenant DZ and indicated that the Tenants had not paid \$1,400.00 in rent for April and May 2018 and if they failed to pay the rent or dispute the notice, that they would have to move out of the rental unit on May 15, 2018.

The Landlord stated that Tenant DZ is still living in the rental unit and has not paid the rent for April, May or June 2018. The Landlord is requesting compensation for three months rent and an Order of Possession for the rental unit.

#### Tenants' Evidence:

Tenant GZ testified that he made arrangements with the Landlord to rent a trailer at the resort. Tenant GZ moved his father, Tenant DZ, into the rental and stated that the verbal agreement for the rental of the trailer was quite open-ended with no specific end date and a loose agreement to pay the rent by the end of the month. These were the arrangements that the Tenants and the Landlord followed throughout January, February and March 2018.

Tenant GZ stated that he attempted to pay the rent for April, but the Resort Manager stated that the Tenants didn't have to pay for the month, but that they did however, have to move out of the rental unit at the end of April. Tenant GZ said that he continued to try and give the rent to the Landlord, but they refused. On May 1, the Tenants attempted to give the Landlord the rent for May, but were refused again. On May 5, 2018, the Ten-

Day Notice was served on Tenant DZ and the Tenants applied for Dispute Resolution on May 10, 2018.

Tenant GZ responded to the question of whether they have the rent now and are prepared to pay it. Tenant GZ stated that they are not prepared to pay for the April and May rent right now.

### Analysis

The terms of this tenancy have been difficult to determine because there is no written Tenancy Agreement and further, as a result of the conflicting testimony between the Landlord and the Tenants.

Section 26 of the Act explains that the 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. Although the Tenants testified that they tried to pay the April 2018 rent and the Landlords refused to accept it, the Tenants have also stated that they did not pay the May 2018 rent and are unprepared to pay it now.

From the testimony and evidence presented, I find that the Tenants and the Landlord agreed on \$700.00 of monthly rent that was due at any time during the month. The Tenants did not pay their rent for April 2018 and also failed to provide sufficient evidence to prove that they had permission not to pay their rent or had a right under this Act to deduct all or a portion of the rent. The Tenants also acknowledged that they did not pay their rent in May or June 2018. As a result, I find that the Tenants are in breach of Section 26 of the Act.

On May 5, 2018, the Landlord served a Ten-Day Notice to the Tenants in accordance with Section 88 and 90 of the Act and I find that the vacate date of May 15, 2018 is valid. The Tenants are currently occupying the rental unit and have not paid rent and as such, I find that the Landlord is entitled to an Order of Possession of the rental unit, in accordance with Section 55 of the Act.

The Landlord has established a monetary claim for a total of \$2,100.00, as the Tenants have not paid the \$700.00 rent, in accordance with their verbal tenancy agreement, for the months of April, May and June 2018. Although the Landlord has claimed for more compensation due to entering the "high season" for their resort, they failed to provide sufficient evidence that the increase in rent was a condition of the tenancy agreement.

In any event, the Landlord is not able to increase the rent for 12 months after the start of the tenancy.

I find that the Landlord's Application has merit and the Landlord should be compensated for the Filing Fee of \$100.00.

I find that the Tenant's Application to cancel the Ten-Day Notice is dismissed without leave to reapply.

### Conclusion

I am granting the Landlord an Order of Possession to be effective two days after notice is served 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 has established a total monetary claim, in the amount of \$2,200.00, which includes \$2,100.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I grant the Landlord a Monetary Order for \$2,200.00 in accordance with Section 67 of the Act. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: June 26, 2018

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Residential Tenancy Branch