



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR MNDCL FFL

### Introduction

The landlords originally applied for a Direct Request (ex-parte application) pursuant to the *Residential Tenancy Act* (“the Act”). This application was adjourned to a participatory hearing to address the landlords’ application for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for damage or loss pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants/respondents did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords/applicants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

Landlord SL testified that he served both tenants with a copy of his 10 Day Notice to End the Tenancy for Unpaid Rent by posting the notice on the tenants’ door on March 5, 2018. I accept the landlord’s undisputed testimony verified by the information on the Notice to End Tenancy as well as the proof of service documents provided by the landlord. I find that the tenants were both deemed served with the 10 Day Notice on March 8, 2018 – 3 days after the posting of the notice.

Landlord SL also testified that he served both tenants with his Application for Dispute Resolution package including Notice of Hearing for this date in person on March 21, 2018 and by registered mail on March 22, 2018. The landlord provided copies of 2 Canada Post registered mail receipts and tracking information. Based on the undisputed

testimony of the landlord and his supporting documents, I find that the tenants were both deemed served (individually) with the landlords' Application for Dispute Resolution package on March 27, 2018 – 5 days after the registered mailing.

The landlord also testified that he served a second evidence package to the tenants on May 11, 2018 by registered mail. He also submitted receipts with respect to that mailing and I therefore find that the tenants were both individually deemed served with the landlord's additional evidence package 5 days after its registered mailing (May 16, 2018).

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

Is the landlord entitled to a monetary order for damage or financial loss, including loss of rental income?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

This tenancy began prior to the current landlords' purchase of the property in October 2017. Landlord SL testified that the tenants continue to reside in the rental unit as of the date of this hearing. The tenants had no formal written tenancy agreement and the landlords did not create one when they took over the property. Landlord SL testified that a rental amount of \$1100.00 is payable on the first of each month. Landlord SL testified that he and his wife (co-landlord) continue to hold the \$550.00 security deposit paid by the tenants at the outset of this tenancy. The landlords testified that one of the two named tenants continues to reside in the rental unit.

The landlord submitted that, when they purchased the property, they were only aware of one tenant who occupied the rental unit (Tenant RB). When November 2017, December 2017 and January 2018 rent went unpaid, the landlord corresponded with Tenant RB by text and email. The landlords submitted text messages to show that they attempted to collect the unpaid rent, arrange for partial payment, and move-out with Tenant RB. According to the landlords, Tenant RB appears to have vacated the rental unit at the beginning of March 2018 but his girlfriend has not moved out and continues to occupy the rental unit as of the date of this hearing.

The landlord testified that he received payments that ultimately cleared the rental arrears for the months of November 2017, December 2017 or January 2018. However, the rent remains unpaid for the months of February, March, April and May 2018. The landlord testified that, as of the date of this hearing, the tenant's girlfriend continues to reside in the rental unit. As of the date of this hearing (the 1<sup>st</sup> day of June 2018), neither the tenant nor his girlfriend have paid June 2018 rent.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent for the month of March 2018. Landlord SL testified that, at the time the 10 Day Notice was issued, the tenants did not pay rent of \$1100.00 due on March 1, 2018. As of the date of this hearing, the landlords testified that 5 months of rent totalling \$5500.00 remains unpaid. These 5 months of unpaid rent encompass February, March, April, May and June 2018.

The landlords sought an Order of Possession based on Unpaid Rent. The landlords testified that the tenant did not pay the \$1100.00 rent for the 5 months February 2018 through June 2018. Neither tenant has applied to cancel the Notice to End Tenancy.

The landlords also applied for a monetary award of \$5500.00 for the months February 2018 through June 2018.

### Analysis

Unless there is evidence to the contrary, there is a presumption in law of a joint tenancy. Joint tenants are joint and severally liable for monies owed to the landlord relating to the tenancy. In this case, the fact that both parties resided in the unit at the same time, paid rent jointly, had a romantic relationship and that Tenant RB continues to negotiate with the landlord all reflect aspects of a joint tenancy agreement. I note that the landlords' testimony was undisputed at this hearing. Further, I note that Tenant RB had not formally removed himself from a written tenancy agreement or in another fashion ensure that he was no longer a subject of this oral tenancy agreement. Residential Tenancy Policy Guideline No. 13 clarifies the intention of the legislation stating;

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord... Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended.*

I accept the landlords' undisputed testimony, supported by their documentary evidence to show that the tenant(s) have not paid rent as required. Based on all the evidence provided in this hearing, I find that the respondents are co-tenants and that the respondents owe 5 months' rent totalling \$5500.00 for February, March, April, May and June 2018.

The co-tenants were both served in accordance with the *Act*, as described above. Based on the testimony of the landlord, I find that the tenants are jointly and severally liable in that they failed to pay the March 2018 rent (or rental arrears) within five days of receiving the 10-Day Notice to End Tenancy. Neither tenant has made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant(s)' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 18, 2018. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

I find that the landlords are entitled to receive an order for unpaid rent totalling \$5500.00. As of the date of this hearing (the 1<sup>st</sup> of June), at least one of the tenants continues to reside in the rental unit and has not paid any outstanding rent. I accept the landlords' submissions that they will not likely be able to re-rent the premises in the month of June 2018 as the first of the month has passed, they have been unable to advertise and they do not know the condition of the rental unit at this point. As this was a long-term tenancy, the landlords will have basic maintenance and repairs to conduct prior to re-renting.

The landlord testified that he continues to hold a security deposit of \$550.00 plus any interest from the outset of the tenancy to the date of this decision for this tenancy. Pursuant to section 72 of the *Act*, I will allow the landlords to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. [there is no interest payable for this period].

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for 5 months (February, March, April, May, June /18)	\$5500.00
Less Security Deposit	-550.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$5050.00</b>

The landlords are provided with this monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant(s) 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: June 11, 2018

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Residential Tenancy Branch