



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR OPC MNR NMSD FF CNR CNC MT

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 66;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

### Preliminary Issue – Amendment to Landlord’s Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent since the filing of the application. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

### Issues

Is the landlord entitled to an order of possession or should both the 10 Day Notice and One Month Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

### Background and Evidence

The tenancy began on February 1, 2018 with a monthly rent of \$1150.00 payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$575.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$1150.00 rent payable on May 1, 2018. The landlord testified that on May 4, 2018 she served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice. The landlord testified that a rent cheque in the amount of only \$400.00 was received on May 9, 2018. The landlord testified that the balance of \$750.00 for May 2018 rent remains outstanding and the tenants have not paid any rent for the month of June and July 2018. The landlords claim is for total outstanding amount of \$3050.00.

The tenants acknowledged service of the 10 Day Notice and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. Tenant M.D. testified that she paid her portion of the rent for May 2018 in the amount of \$750.00 and that she had a receipt as proof. A receipt was not submitted on file. Tenant M.D. acknowledged that rent has not been paid for June and July 2018.

### Analysis

I am satisfied that the tenant was served with the 10 Day Notice on May 4, 2018.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants provided insufficient evidence that rent was paid in full within 5 days after receiving the notice nor did the tenants have a right under this Act to deduct all or a portion of the rent. I accept the landlord's testimony that only a cheque in the amount of \$400.00 was received within 5 days of the 10 Day Notice being served. The tenants failed to provide supporting evidence of any further payments made to the landlord.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's claim for outstanding rent of \$3050.00 which includes loss of rent for the months of June and July 2018 as the tenants have not yet vacated the rental unit.

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 for a total monetary award of \$3150.00.

The landlord continues to hold a security deposit of \$575.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2575.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2575.00. 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: July 04, 2018

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Residential Tenancy Branch