



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNRLS, FFL

### Introduction

This hearing dealt with a landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated July 30, 2018 ("1 Month Notice"), for a monetary order for unpaid rent or utilities, to retain the tenants' security deposit, and to recover the cost of the filing fee.

The landlords and the son/agent of the landlord EY ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and the agent were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by registered mail on September 13, 2018, via two separate packages; with each package addressed to the name of the each of the tenants and addressed to the rental unit address as the tenants continue to occupy the rental unit. The registered mail tracking numbers were provided orally by the agent and have been included on the cover page of this decision for ease of reference and marked as 1 and 2. According to the online registered mail tracking website information the registered mail packages were both unclaimed and eventually returned to the sender, even though both tenants continued to occupy the rental unit as of the date of the hearing, October 22, 2018. The agent stated that his mother posted the notice of registered mail cards to both tenants on the tenants' door between September 14 and 17, 2018. Based on the above, I find the tenants were deemed served with the Notice of Hearing, application and documentary evidence on September 20, 2018. Pursuant to section 90 of the *Act*, documents served by registered mail are deemed served five days after they are

mailed. As the tenants did not attend the hearing, I find that the landlords' application is undisputed and unopposed by the tenants.

### Preliminary and Procedural Matter

The landlords confirmed the email address at the outset of the hearing. The landlords were advised that the landlords would receive the decision by email and that any applicable orders would also be emailed to them. The tenants will be sent the decision by regular mail as an email address for the tenants was not included on the application.

### Issues to be Decided

- Are the landlords entitled to an order of possession based on an undisputed 1 Month Notice?
- Are the landlords entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on May 1, 2018 and is scheduled to end on April 31, 2019. Monthly rent is \$1,500.00 per month and is due on the first day of each month. The tenants' paid a security deposit of \$750.00 at the start of the tenancy.

The landlords stated that the 1 Month Notice was served on the tenants on July 30, 2018 and was dated the same date. The tenants did not dispute the 1 Month Notice which lists a total of 4 causes. The 1 Month Notice included an effective vacancy date of August 30, 2018 which automatically corrects under section 53 of the *Act* to August 31, 2018. The landlords provided a copy of the agreement signed with the tenants which indicates if the tenants vacated the rental unit by August 31, 2018 that the tenants would not be required to pay August 2018 rent. The tenants failed to comply with that mutual agreement as the tenants continue to occupy the rental unit as of this date, October 22, 2018.

The landlords believe the mutual agreement is now void and are seeking unpaid August 2018 rent as the tenants failed to vacate as indicated in the mutual agreement.

The landlords confirmed that money has been paid by the respondents for “use and occupancy only” for September and October of 2018. The landlords are seeking an order of possession based on the undisputed 1 Month Notice and unpaid August 2018 rent plus the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlords and agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenants did not dispute the 1 Month Notice within 10 days after being served by the landlords on July 30, 2018. The effective vacancy date of the 1 Month Notice is listed as August 30, 2018 which as indicated above, automatically corrects to August 31, 2018. Section 47 of the *Act* indicates that when tenants do not dispute a 1 Month Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date. Therefore, I find the tenancy ended on August 31, 2018. Therefore, I grant the landlords an order of possession pursuant to section 55 of the *Act* effective **October 31, 2018 at 1:00 p.m.**

**Claim for unpaid rent** – I agree with the landlords that the mutual agreement is now null and void as I find the tenants breached the mutual agreement by failing to vacate by August 31, 2018. Therefore, pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement and based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore, I find the landlords have met the burden of proof and that the tenants owe the landlord **\$1,500.00** for unpaid August 2018 rent.

As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

I find the landlords have established a total monetary claim of **\$1,600.00** comprised of \$1,500.00 for unpaid August 2018 rent, plus the \$100.00 filing fee.

I find the tenancy ended on August 31, 2018 which was the corrected effective vacancy date of the 1 Month Notice.

The landlords are holding the tenants' security deposit of \$750.00 which has accrued \$0.00 in interest. I find that the landlords are entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit plus \$0.00 in interest as follows:

Unpaid rent for August 2018	\$1,500.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$1,600.00</b>
<i>(Less tenants' security deposit including \$0.00 interest)</i>	<i>-\$750.00</i>
<b>TOTAL BALANCE OWING BY TENANTS TO LANDLORDS</b>	<b>\$850.00</b>

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlords to retain the tenants' full security deposit including \$0.00 in interest of \$750.00 from the \$1,600.00 amount owing to the landlords. Therefore, I grant the landlords a monetary order for the balance owing by the tenants to the landlords in the amount of **\$850.00**.

#### Conclusion

The landlords' application is fully successful.

The tenancy ended on August 31, 2018.

The landlords have been granted an order of possession effective October 31, 2018 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlords have established a total monetary claim of \$1,600.00 as indicated above. The landlords have been authorized to retain the tenants' full security deposit including \$0.00 in interest of \$750.00 in partial satisfaction of the landlords' monetary claim. The landlords are granted a monetary order under section 67 for the balance owing by the tenants to the landlords in the amount of \$850.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 22, 2018

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Residential Tenancy Branch