



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL;    CNR, LRE, FFT

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent, dated October 17 and 24, 2018 ("two 10 Day Notices"), pursuant to section 46;
- an order restricting the landlord's right to enter the unit, pursuant to section 70;
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The male tenant did not testify at this hearing and the female tenant confirmed that she had permission to speak on his behalf. This hearing lasted approximately 47 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application.

The landlord confirmed that he did not receive the tenants' application for dispute resolution hearing package. However, he verbally consented to dealing with their application at this hearing because he was aware that he issued two 10 Day Notices to

them and they were disputing the order of possession he was seeking. Accordingly, I dealt with the tenants' application on the basis of the landlord's consent.

The tenants were in receipt of the landlord's two 10 Day Notices. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's two 10 Day Notices.

#### Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 22, 2018, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed to bear their own costs for the \$100.00 filing fees paid for their applications;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of their applications at this hearing, except for the landlord's monetary claim for unpaid rent.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

The parties were unable to settle the landlord's application for a monetary order for unpaid rent and asked that I make a decision about it. Below are my findings.

#### Issue to be Decided

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

### Background and Evidence

Both parties agreed to the following facts. This tenancy began on July 1, 2018. Monthly rent in the amount of \$2,300.00 is payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenants and the landlord continues to retain both deposits. The tenants continue to reside in the rental unit.

The landlord stated that the tenants failed to pay rent of \$2,300.00 to the landlord for each month from September to November 2018. The landlord said that he was seeking pro-rated rent of \$1,632.25 from the tenants for December 2018 rent because the tenants would be vacating the rental unit on December 22, 2018, as per the parties' above agreement. The tenant stated that she paid rent from September to November 2018 to the landlord in cash but he failed to provide her with rent receipts. She claimed that she had bank records to show her cash withdrawals for rent but failed to provide them for this hearing.

### Analysis

Section 26 of the *Act* requires tenants to pay rent when it is due under a tenancy agreement. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenants owe rent of \$2,300.00 per month to the landlord from September to November 2018. I find that the tenants failed to pay rent for the above months to the landlord because they did not provide documentary evidence, such as bank records, which were available to them prior to the hearing, to show that they paid cash rent to the landlord. Pursuant to section 67 of the *Act*, I award the landlord \$6,900.00 total in unpaid rent from September 1 to November 30, 2018.

I order the tenants to pay the landlord pro-rated rent of \$1,632.25 for the period from December 1 to 22, 2018, as per the landlord's request. Since December 2018 rent was not yet due at the time of this hearing on November 30, 2018, I cannot issue a monetary

order to the landlord for this amount. If required, the landlord may file a new application for dispute resolution to recover this amount if it is unpaid.

The landlord continues to hold the tenants' security and pet damage deposits totaling \$2,300.00. No interest is payable on the deposits during this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain both deposits in partial satisfaction of the monetary award for the rent.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on December 22, 2018. The landlord is provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on December 22, 2018. 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.

I issue a monetary Order in the landlord's favour in the amount of \$4,600.00. 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.

I order the landlord to retain the tenants' entire security and pet damage deposits totalling \$2,300.00.

The landlord's two 10 Day Notices are cancelled and of no force or effect.

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: December 03, 2018

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Residential Tenancy Branch