



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPR and OPL, MNR, MNDC, MNSD, FF

### Introduction

This hearing concerns the landlord's application for an order of possession (unpaid rent and landlord's use of property) / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on May 01, 2007. Monthly rent of \$1,500.00 is due and payable in advance on the first day of each month, and a security deposit of \$750.00 was collected on April 10, 2007.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated May 26, 2014. The notice was served by way of registered mail. Evidence submitted by the landlord includes a copy of the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered." A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is July 31, 2014. The reason identified on the notice is support of its issuance is that the "landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Later, arising from rent of \$1,500.00 which was unpaid when due on June 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 04, 2014. The notice was served by way of delivery to the unit mail slot on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when

the tenants must vacate the unit is June 19, 2014. Following this on June 04, 2014, by way of cheque dated June 01, 2014, the tenants made payment toward rent in the limited amount of \$562.63, leaving a balance owed of \$937.37 (\$1,500.00 - \$562.63).

Thereafter, the tenants paid the remaining balance of June's rent in the amount of \$937.37 by way of cheque dated June 16, 2014.

On June 13, 2014, the landlord filed a direct request application for an order of possession and a monetary order reflecting compensation for unpaid rent for June 2014. In the result, an *ex parte* proceeding took place on June 19, 2014. By way of "interim decision" issued on that same date the Arbitrator found, in part, as follows:

As I am unable to conclude that the Notice of Direct Request Proceeding documents were properly served, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act.

Subsequently, on July 04, 2014 the landlord amended her original application. In addition to an order of possession for unpaid rent and a monetary order reflecting compensation for unpaid rent, the amended application includes application for an order of possession for landlord's use of property / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

The hearing was reconvened on August 20, 2014. During this reconvened hearing the tenants testified that they vacated the unit on July 31, 2014 pursuant to the landlord's issuance of a 2 month notice. The tenants also testified that pursuant to the relevant legislation, they withheld payment of rent for July 2014. Further, the tenants testified that they provided the landlord with their forwarding address on or about August 02 or 03, 2014, and that they seek the return of their security deposit.

As the tenants have now vacated the unit, the landlord withdrew her application for an order of possession. Further, as the tenants have paid June's rent in full, the landlord withdrew her application for a monetary order reflecting compensation for unpaid rent for June 2014. However, the landlord testified that she seeks a monetary order reflecting compensation for unpaid rent for July 2014 in the amount of \$1,500.00, in addition to recovery of the \$50.00 filing fee [total: \$1,550.00].

While there was some discussion around possible resolution of the dispute during the hearing, no mutually agreeable settlement was achieved.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated June 04, 2014. The tenants did not pay the full amount of outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. However, the tenants ultimately paid the full amount of rent for June 2014 in June, and before vacating the unit by July 31, 2014. Accordingly, the landlord withdrew her application for an order of possession, and a monetary order reflecting compensation for unpaid rent for June 2014.

Section 51 of the Act speaks to **Tenant's compensation: section 49 notice**, and provides in part as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

I find that the landlord's issuance of a 10 day notice to end tenancy for unpaid rent dated June 04, 2014, does not operate as a waiver of her earlier issuance of a 2 month notice to end tenancy for landlord's use of property dated May 26, 2014. Accordingly, I find that the tenants are entitled to withhold payment of rent for July 2014 pursuant to the statutory provisions set out immediately above. In the result, the landlord's application for a monetary order reflecting compensation for unpaid rent for July 2014 is hereby dismissed.

As the landlord has withdrawn her application for an order of possession, and has withdrawn her application for a monetary order reflecting compensation for unpaid rent for June 2014, and as she has not succeeded with her application for a monetary order reflecting compensation for unpaid rent for July 2014, her application for retention of the tenants' full security deposit as an offset to any monetary entitlement is dismissed.

However, in view of the unusual manner in which events unfolded towards the end of this tenancy with regard to issuance of 2 different notices to end tenancy, payments made toward June's rent, and issuance of an "interim decision" arising from the landlord's direct request application, I find that the landlord has established entitlement to recovery of  $\frac{1}{2}$  the filing fee in the amount of **\$25.00** ( $\$50.00 \div 2$ ).

I order that the landlord withhold **\$25.00** from the tenants' security deposit of \$750.00 plus interest of \$19.57 [**total: \$769.57**], and I order the landlord to repay the balance to the tenants in the amount of **\$744.57** ( $\$769.57 - \$25.00$ ). Finally, I grant the tenants a **monetary order** for this amount.

### Conclusion

Aspects of the landlord's application which were not withdrawn, are hereby dismissed with the exception of her successful application to recover  $\frac{1}{2}$  the filing fee (**\$25.00**).

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$744.57**. Should it be necessary, this order may be served on the landlord, filed in the 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: August 21, 2014

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Residential Tenancy Branch

