



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR MNR FF  
For the tenants: CNR FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 10, 2015 and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received the application and documentary evidence from the other party and had the opportunity to review the documents prior to the hearing. I find that the parties were served in accordance with the *Act*.

### Issues to be Decided

- Should the 10 Day Notice dated September 9, 2015 be cancelled or upheld?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is either party entitled to the recovery of the cost of their filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on December 9, 2009. Monthly rent in the amount of \$950 is due on the first day of each month. The tenants submitted in evidence a handwritten note from the landlord dated June 28, 2014 which reads in part that “rent is increased July 1<sup>st</sup>, to \$1050.00 per month” and is signed by the landlord. The landlord agreed that he gave the tenants that note. The parties were advised that the rent increase was of no force or effect as the note dated June 28, 2014 does not comply with section 42 of the *Act*. As a result, monthly rent continues to be \$950 per month.

The parties agreed that the tenants paid a security deposit of \$500 at the start of the tenancy which the landlord continues to hold. The landlord was advised that the security deposit exceeds ½ of the monthly rent, which is contrary to section 19 of the *Act*.

The landlord is seeking unpaid rent and/or loss of rent for the months of July, August, September, October and November of 2015.

The parties confirmed that a 10 Day Notice dated September 9, 2015 was served on the tenants on September 11, 2015. The tenants disputed the 10 Day Notice on September 14, 2015. The amount listed as owing was \$3,150 due for the months of July, August and September of 2015. The effective vacancy date listed on the 10 Day Notice was September 21, 2015.

The tenants confirmed that no rent had been paid for any of the five months being claimed for and that for three of those months they did not pay as the landlord was away and they did not want to pay a person they did not know in cash without getting a receipt for a cash payment. The tenants admitted that when the landlord returned from being away, they did not make any attempts to pay the landlord even after being personally served the 10 Day Notice on September 11, 2015.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

The tenants confirmed that rent was not paid for the five months being claimed for, and that even when the landlord served them with a 10 Day Notice, they made no attempts to pay the rent. Therefore, I find the tenants breached section 26 of the *Act* that requires the tenants pay rent on the day that it is due under the tenancy agreement. In the matter before me, the tenants failed to pay rent for the months of July, August, September, and

the landlord suffered a loss of rent for October and November of 2015. As a result, **I dismiss** the tenants' application to cancel the 10 Day Notice as I find they have provided insufficient evidence.

There is no dispute that the tenants continue to occupy the rental unit. As a result, I find the landlord has provided sufficient evidence to prove the 10 Day Notice is valid. **I uphold** the 10 Day Notice dated September 9, 2015 as a result. As the effective date of the 10 Day Notice, September 21, 2015 has passed and the tenants continue to occupy the rental unit and pursuant to section 55 of the *Act*, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on September 21, 2015 and that the tenants have been overholding in the rental unit for the months of October and November.

**Claim for unpaid rent/loss of rent** – I find that rent of \$4,750 remains owing, comprised of \$950 for unpaid rent for each of the months of July, August and September 2015, plus a loss of rent of \$950 for each of the months of October and November 2015 . The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$4,750**.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of their **\$50** filing fee.

**Monetary Order** – **I find** the landlord has established a total monetary claim of **\$4,800**, comprised of \$4,750 in unpaid rent and loss of rent, plus the recovery of the \$50 filing fee.

The landlord has not claimed against the tenants' security deposit. Therefore, **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of **\$4,800**.

The landlord is cautioned to comply with section 42 and 19 of the *Act* in the future.

### Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlord's application is successful. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be

served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has proven a monetary claim of \$4,800 and has been granted a monetary order in that amount. 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: November 18, 2015

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Residential Tenancy Branch

