



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with a support person and an agent. However, the line remained open while the phone system was monitored for in excess of 10 minutes prior to hearing any testimony and no one for the tenants joined the call. The landlord's agent testified that the tenants were served with the original hearing package, which included an Application for Dispute Resolution and notice of this hearing by registered mail on September 16, 2017, and with the Amendment on September 22, 2017 by posting it to the door of the rental unit. The landlords have provided copies of 2 Registered Domestic Customer Receipts stamped by Canada Post, and the landlord's agent testified that both packages were picked up by one of the tenants on September 18, 2017 as evidenced by the on-line tracking system of Canada Post. Since the original hearing package also contained a monetary claim, I find that both tenants have been served in accordance with the *Residential Tenancy Act*.

The landlords' agent gave affirmed testimony and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord's agent testified that the claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement referred to loss of rental revenue, not knowing the date this matter

would be scheduled for hearing, and now claims that loss of rental revenue as unpaid rent, and no loss of rental revenue is claimed.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlords' agent testified that this month-to-month tenancy began on February 5, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$1,900.00 per month is payable on the 5<sup>th</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$932.50 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a suite in a duplex, which the landlord also owns, but does not reside on the property.

The landlords' agent further testified that the tenants fell into arrears of rent and on August 22, 2017 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing, by posting it to the door of the rental unit. It is dated August 22, 2017 and contains an effective date of vacancy of September 1, 2017 for unpaid rent in the amount of \$1,900.00 that was due on August 5, 2017. The tenants paid \$1,900.00 on September 1, 2017 and promised to pay another \$1,900.00 on September 5, 2017, however no further payments have been received by the landlords. The landlords issued a receipt for the September 1, 2017 payment, a copy of which has also been provided for this hearing, which indicates that the money collected is accepted for use and occupancy only and does not serve to reinstate the tenancy.

The tenants have not served the landlords with an application for dispute resolution disputing the notice, and the landlords seek an Order of Possession, a monetary order for

unpaid rent in the amount of \$5,700.00 for September, October and November, 2017 rent, recovery of the \$100.00 filing fee and an order permitting the landlords to keep the \$937.50 security deposit in partial satisfaction.

### Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit within 10 days after service.

In this case, I accept the undisputed testimony of the landlords' agent that the tenants have not paid the rent in full and have not served the landlords with an Application for Dispute Resolution disputing the notice. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I also accept the undisputed testimony of the landlords' agent that the tenants paid \$1,900.00 on September 1, 2017, which is for August, 2017 rent, and no further rent has been received by the landlords. Therefore, I am satisfied that the tenants are in arrears of rent the sum of \$5,700.00 for September, October and November, 2017.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$937.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords for the difference in the amount of \$4,862.50.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I further order the landlords to keep the \$937.50 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,862.50.

This order is final and binding and may be enforced.

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: November 08, 2017

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Residential Tenancy Branch