



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on December 24, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on July 1, 2009 as a month to month tenancy. Rent is \$1,100.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$550.00 on June 30, 2009.

The Landlord said that the Tenant has unpaid rent of \$100.00 for July, 2010, \$1,100.00 for August, 2010, \$150.00 for November, 2010 and \$395.00 for December, 2010. As well the Landlord said the Tenant has unpaid utility bills of \$372.23 for several months in 2010. As the Tenant did not pay these amounts when they were due the Landlord personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2010 to the Tenants. The Landlord said the Tenants moved out January 7, 2011 and did not pay the rent or the utilities for January, 2011. As the Tenants have

moved out of the rental unit the Landlord said she does not require an Order of Possession as she has possession of the rental unit.

The Landlord said her claim is for \$1,745.00 of unpaid rent for 2010, \$372.23 of unpaid utilities for 2010 and the rent of \$1,100.00 and utilities of \$157.00 for January, 2011 as the Tenant did not move out of the unit until January 7, 2011, not on December 31, 2010 as he said he would. The Landlord said the Tenant had the use of the unit for January, 2011 and she could not rent it out to a new tenant.

### Analysis

Section 46 of the Act states that within 5 days of receiving A Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution.

The Tenant was served the Notice to End Tenancy by personal delivery on December 4, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 9, 2010. The Tenants did not pay the unpaid rent and did not apply for dispute resolution; therefore the Notice to End Tenancy is valid. The Tenants moved out January 7, 2011.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

I find that the Landlord is entitled to recover of unpaid rent for 2010 in the amount of \$1,745.00 and Utilities for 2010 in the amount of \$372.23 as well as a portion of January 2011 rent and utilities up to January 20, 2011 in the amount of \$810.97 (\$1257.00 X 20 of 31 days of January). The January claim is reduced because the Landlords have an obligation to mitigate their damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

As the Landlord has been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security in partial payment of the rent and utility arrears. The Landlord will receive a monetary order for the balance owing as following:

	2010 Rent and Utilities arrears	\$2,117.23
	2011 Rent and Utilities arrears	\$ 810.97
	Recover Filing Fee	<u>\$ 50.00</u>
	Subtotal	\$2,978.20
Less	Security Deposit	\$ 550.00
	Interest	<u>\$ 0.00</u>
	Balance Owing	<u>\$2,428.20</u>

### Conclusion

A Monetary Order in the amount of \$2,428.20 has been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 18, 2011.

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Residential Tenancy Branch