



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FFS

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing by registered mail. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This tenancy began July 1, 2011 with monthly rent of \$750.00 and the tenants paid a security deposit of \$375.00. The tenancy agreement states that the tenants are responsible for 40% of the gas bill and 50% of the hydro bill.

On December 15, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or utilities; the tenants have not filed to dispute this notice.

The landlord stated that the tenants have not paid the utility bills since September 2011 and currently owe the landlord \$298.74 for hydro usage and \$270.21 for gas usage. The landlord stated that the tenants have also not paid the \$750.00 January 2012 rent. The landlord stated that he presented the tenants with the past due bills and a demand for payment and that the tenants still did not pay the utilities as required under the tenancy agreement.

The landlord stated that he had received a \$149.38 cheque from the tenants for gas and hydro in December 2011 but that the cheque was returned as there were no funds in

the tenants account. The landlord stated that the tenants, without his permission, deducted \$31.55 from the rent and the landlord is seeking to recover that amount.

The landlord in this application is seeking \$1350.50 compensation for the unpaid utilities, rent and unauthorized rent deduction.

As the tenants remain in the rental unit and have not paid the utilities in full or filed an application to dispute the notice, the landlord has requested an order of possession effective 2 days after service upon the tenants.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent and utilities.

Accordingly I find that the landlord is entitled to a monetary order for \$1350.50.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$1350.50 in unpaid rent and utilities. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$375.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1025.50**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 11, 2012

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Residential Tenancy Branch