



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid utilities; a Monetary Order for unpaid utilities; to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenants in person on February 13, 2012. He stated that the tenants acknowledged receipt of the notice, and advised the landlord that they would be calling in to the conference call. The tenants did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of the main floor of a single detached home. Pursuant to a written agreement, the tenancy started on October 1, 2012. The rent is \$800.00 per month. The landlord stated that the tenants originally paid a security deposit of \$400.00., but that he gave it back so that they could purchase living necessities such as a bed.

The landlord testified that the tenants have refused to pay their portion of the utilities of 60% since October 20<sup>th</sup>, 2011, in spite of numerous requests, both made orally and in writing. He stated that he sent the tenants a request to pay by registered mail on December 15, 2011, and that they continue to refuse to pay.

The landlord submitted a claim for approximately \$400.00. In his documentary evidence, the landlord provided hydro and gas invoices for January and February 2012 showing arrears of \$324.76, \$249.37, and \$105.00, totalling \$679.13 which, based on 60%, establish a calculated amount of \$407.48 owed by the tenants.

### Analysis

I accept the landlord's undisputed testimony that he served the tenants with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenants knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. Section 46(6) also provides that if the notice to end tenancy pertains to utility charges, and if the charges are unpaid for more than 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charge as unpaid rent. I accept the landlord testimony that he sent the tenants a written

request for payment by registered mail on December 15, 2011. The tenants in this matter have not paid the utility charges and have not filed an application for dispute resolution. On that basis the landlord is entitled to an order of possession.

I also award the landlord a monetary order for 60% of the unpaid utility charges provided as evidence.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$407.48. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$457.48.

This Order may be registered 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: February 27, 2012.

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Residential Tenancy Branch