



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, MNDC, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent, compensation for damage and loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The female tenant and landlord were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The male tenant was served with notice of this hearing; sent via registered mail to the rental unit address on March 9, 2014. The landlord submitted a copy of the Canada Post stamp on the envelope that was returned, marked as unclaimed. Registered mail is deemed served on the 5<sup>th</sup> day after mailing. Therefore, I find that the male tenant is deemed served with Notice of this hearing effective March 14, 2014.

### **Preliminary Matters**

The landlord did not supply a detailed calculation of the claim made.

The landlord did not serve the tenants a copy of the evidence given to the Residential Tenancy Branch. That evidence was set aside.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the security deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on June 1, 2013; rent is \$1,500.00, due on the first day of each month. A security deposit in the sum of \$750.00 was paid. The tenancy required the tenants to pay 70% of utility costs; for hydro and gas.

The tenant confirmed receipt of the 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of February 21, 2014. The tenant said she received that Notice at least 5 weeks ago. The landlord said that he personally served the tenant's adult son with the Notice on February 11, 2014.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,916.34 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The tenant said that they owe \$5,400.00 to the end of April, 2014 for rent and that the utility costs; to April 1, 2014 are \$1,900.00.

The tenant did not dispute the fact that rent owed effective February 1, 2014 was indicated on the Notice was \$3,916.34 and that since no rent has been paid for March and April, they would owe an additional \$3,000.00 rent.

The landlord could not provide any breakdown of rent payments made each month; copies verifying utility costs were not supplied.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenants received the Notice to end tenancy on February 11, 2014; the day the tenant's adult son was given the Notice. There was no dispute that the tenant's received the Notice.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on February 11, 2014, I find that the earliest effective date of the Notice is February 21, 2014.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on February 21, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; February 21, 2014.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the sum of \$5,400.00, to March 31, 2014; plus \$1,500.00 owed on April 1, 2014. I have based this finding on the tenant's acknowledgement that rent was owed in these sums.

In the absence of copies of utility bills verifying the sum owed by the tenants, I find that the landlord is entitled to compensation in the sum of \$1,900.00 for utilities to April 1, 2014. This is the amount the tenant confirmed was owed to the landlord.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Therefore, the landlord has established a monetary claim, in the amount of \$8,900.00 for rent owed to April 30, 2014 (\$6,900.00) and utilities owed to March 31, 2014 (\$1,900.00;) plus the \$100.00 filing fee cost. The landlord claimed a total of \$7,900.00 compensation; however, based on the tenant's testimony I find that the application is amended to include the sums the tenant acknowledged are owed to the landlord.

Based on these determinations I grant the landlord a monetary Order for the balance of \$8,150.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and utilities.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: April 28, 2014

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Residential Tenancy Branch

