



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlords attended; the tenants did not attend the telephone conference call hearing.

The landlord stated that he served tenant LK and PR with the Application for Dispute Resolution and Notice of Hearing by leaving it with those tenants on May 17, 2014.

Based upon the submissions of the landlord, I find tenants LK and PR were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in those tenants' absence.

As the landlord failed to provide convincing evidence that tenant PH was served with the landlord's Application for Dispute Resolution and Notice of Hearing, I have determined that the landlord has not sufficiently served that tenant as required under section 89(1) of the Act and have excluded him from further consideration in this matter.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-The landlord submitted that the tenants vacated the rental unit at the end of May 2014, and as a result, the landlord was no longer seeking an order of possession for the rental unit. I have severed this portion of the landlord's application, and dismiss his request for an order of possession for the rental unit.

*Preliminary matter#2*-In this case, the landlord's only documentary evidence filed with his application was the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). This document was not a copy of the Notice, but rather it was an original document with tenant LK's signature affixed.

On June 17, 2014, the landlord submitted additional documentary evidence, which included some form of an accounting record; however, the landlord provided no evidence that he had sent the additional evidence to the tenants or that he had their written forwarding address to provide the evidence.

Therefore, the landlord's additional documentary evidence was refused from consideration due to their failure to comply with the Rules, specifically sections 3.1 and 3.4, which states that the applicant must file with their application the details of any monetary claim and all evidence available to the applicants at the time the application is filed and in every case, the evidence must be served upon the other party, the tenants in this case.

The landlord was allowed to submit oral evidence regarding their written evidence.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

#### Background and Evidence

The landlord stated that this tenancy began on September 1, 2013, and total monthly rent was \$1560. There was no written tenancy agreement provided.

The landlord gave evidence that on May 3, 2014, he hand delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") to tenant LK, which listed unpaid rent of \$6270 and unpaid utilities of \$294.42 as of May 1, 2014. The effective vacancy date listed on the Notice was May 14, 2014.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

In support of his application, the landlord stated that unpaid rent through May 2014, was \$5210, and unpaid utilities were \$1394.52. This testimony contradicted the amount listed on the landlord's Notice as unpaid rent.

I have no evidence before me that the tenants applied to dispute the Notice.

### Analysis

Based upon the landlord's undisputed evidence, I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay all the outstanding rent listed or file an application for dispute resolution in dispute of the Notice within five days of service.

Despite this, I cannot conclude that the amount of unpaid rent listed on the Notice was accurate. I based this decision on the fact that the amount listed was \$6270, plus unpaid utilities of \$294.42, the landlord's testimony was that unpaid rent was \$5210, and the unpaid utilities was \$1394.52.

While I accept that the tenants owed unpaid rent, I find the landlord's contradictory evidence fails to establish that they owed the amount listed on the Notice. I therefore will grant the landlord a monetary award of the lower figure of the two different figures supplied by the landlord, and that amount is \$5210 for unpaid rent through May 2014 as I have accepted that the tenants owed at least this amount in unpaid rent.

As to the landlord's request for unpaid utilities, section 46(6) of the Act allows a landlord to issue the tenant the Notice if the tenancy agreement requires the tenant to pay utility charges to the landlord, and the tenant has not paid those outstanding utilities after a written demand.

In the case before me, there was no written tenancy agreement and I therefore find the landlord submitted insufficient evidence that the tenant owed utilities to the landlord, as that term is not clearly set out in a written tenancy agreement.

I therefore dismiss the landlord's claim for unpaid utilities.

I have found merit with the landlord's application, and I award him \$100 for recovery of his filing fee paid for this application.

Due to the above, I therefore find that the landlord is entitled to a monetary award of \$5310 comprised of unpaid rent of \$5210 through May 2014, and the \$100 filing fee paid by the landlord for this application.

### Conclusion

The landlord's application has been granted in part as the landlord has been granted a monetary award in the amount of \$5310.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$5310, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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: July 21, 2014

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Residential Tenancy Branch

