



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* ("the Act") for:

1. an Order of Possession for unpaid rent pursuant to section 55;
2. a monetary order for unpaid rent and late fees pursuant to section 67;
3. an Order to be allowed to keep all or part of the security deposit pursuant to section 38; and
4. to recover the filing fee from the tenants for the cost of this application pursuant to section 72.

The tenants did not appear although the teleconference scheduled for 11:00a.m. continued until 11:15a.m. The landlord's agent ("the landlord") attended and was given full opportunity to be heard, to present evidence and to make submissions.

The landlord withdrew her application for an Order of Possession. She testified that the tenants vacated the rental unit some time in December 2014 and, as of January 1, 2015, is re-rented.

Preliminary Issue – Service of Documents: The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was served to the tenants on December 4, 2014 by posting the notice on the rental unit door. The landlord gave sworn testimony that both tenants were served with the landlord's Application for Dispute Resolution hearing package on December 24, 2014 by individual registered mailings. The landlord provided tracking information with respect to those mailings. The landlord testified that she checked the tracking information from her registered mailings prior to the hearing and, while delivery had been attempted by Canada Post to the rental unit address, and notice had been provided to this address, the packages had not been picked up by either tenant.

Residential Tenancy Policy Guideline No. 12 addresses service provisions under the *Act*. Deemed service is described in this policy guideline. A document is presumed to have been served unless there is clear evidence to the contrary: "Deemed service applies to all types of documents not personally served... Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision." I accept that the tenants were deemed served with the 10 Day Notice on December 7, 2014, 3 days after its posting and the landlord's Application for Dispute Resolution hearing package on December 29, 2014, 5 days after mailing of packages to both tenants.

### Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent, damages and losses arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenants' security deposit to satisfy any monetary award?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord gave evidence that the original agreement for the rental unit began November 1, 2013. This one year fixed term rental continued as a month to month rental after October 31, 2014. The rental amount for this unit is \$1328.60. The landlord testified that she continued to hold the \$650.00 security deposit that the tenants paid on October 30, 2013. The rental unit was re-rented to new tenants as of January 1, 2015.

The landlord originally applied for an Order of Possession for unpaid rent for the month of December. The landlord withdrew her application for an Order of Possession, testifying that the tenants vacated the rental unit by the end of December 2014. The landlord testified that the tenants did not pay rent of \$1328.60 due on December 1, 2014. The landlord testified, supported by documentary evidence provided, that the tenants have not paid rent on time or in full since October 2014.

The landlord is seeking a monetary award of \$1328.60 for the unpaid rent in December 2014 as well as a \$25.00 late charge for that month. She provided copies of the written tenancy agreement which established this late payment fee. She also seeks \$500.00 as a result of damage. She testified that the tenants did not clean the apartment; that they left furniture, and garbage. She testified that \$500.00 was incurred by the landlords to remove items and clean the rental unit. She did not submit documentary evidence or

photographs of the unit illustrating the state in which the unit was left, despite being given an opportunity to submit those materials before the end of the day of the hearing.

### Analysis

As the tenants have vacated the rental unit, this hearing was limited to an application by the landlords for a monetary award in rental arrears, fees, damage and loss.

Monetary Order for Rental Arrears: I find that the landlords are entitled to receive an order for unpaid rent from December 2014. There is documentary evidence and undisputed sworn testimony that the December rental amount remains unpaid. I am issuing the attached monetary order that includes the landlords' application for \$1328.60 in unpaid rent for December 2014.

The landlord also applied for \$25 in fees for late payment of rent for December 2014. The written tenancy agreement established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the month of December 2014.

### Monetary Order for Damage

The sole evidence with respect to damage to the unit and related costs incurred by the landlords is the undisputed, sworn testimony of the landlord at hearing. Section 37 of that Act states that unless a landlord and tenant otherwise agree, when the tenant vacates a rental unit, "the tenant must... leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear..." In this case, the landlord testified that this requirement was not met and that the landlord incurred cost before re-renting the unit. Based on this testimony, I find the landlord is entitled to a monetary order in the amount of \$250.00 for removal of items and clean-up of the rental unit after the tenants vacated the unit in excess of the reasonable cost of preparing for re-rental of the unit.

Security Deposit: The landlord testified that she continues to hold a security deposit of \$650.00 plus any interest from October 30, 2014 to the date of this decision for this tenancy. There is no interest payable for this time period. I will allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

Filing Fee: As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for December 2014	\$1328.60
Late Payment Fee for x	25.00
Damage to the rental unit, clean-up	250.00
Less Security Deposit and Interest (\$650.00 plus 0 interest)	-650.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$1003.60</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 22, 2015

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Residential Tenancy Branch

