



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*\$1445 March Rent & \$50 parking & \$25 late fee &  
\$1145 April Rent & \$50 parking & \$24 late fee &  
\$50 filing fee*

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy in April 2015, which is after the effective date of the 10 Day Notice, and for late fees. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

At the outset of this proceeding the Landlord stated that she was withdrawing their request for an Order of Possession because the Tenants vacated the property and returned the keys to their head office reception on April 15, 2015.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 12, 2015, by the Landlord seeking a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Act, regulation or tenancy agreement*, and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. No one was in attendance on behalf of the Tenants. The Landlord submitted evidence that each Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on

March 12, 2015, by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Canada Post tracking information confirms that Canada Post attempted delivery of the package on March 13, 2015, and that a notice card was left that date to advise the Tenants they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on March 18, 2015, that the registered mail was available for pick up.

As of March 29, 2015 the Canada Post tracking information confirms that the Tenants still did not pick up the registered mail and the packages were returned to the Landlord, unclaimed. Based on this information, I find that each Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of each Tenant to avoid service and I find each Tenant was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*, and I continued in absence of the Tenants.

#### Issue(s) to be Decided

- 1) Has the Landlord proven entitlement to a monetary order?

#### Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on October 1, 2011 and switched to a month to month tenancy after September 30, 2012. The Tenants were required to pay rent of \$1,495.00 plus \$50.00 parking for a total amount of \$1,545.00, on the first of each month. On August 25, 2011, the Tenants paid \$722.56 as the security deposit.

The Landlord testified that when the Tenants failed to pay their March 1, 2015 rent a 10 Day Notice was personally served to them on March 5, 2015, and that both Tenants were present when she handed them the 10 Day Notice. The Tenants vacated the unit and returned the keys to the Landlord's head office on April 15, 2015. The Landlord stated that they were able to re-rent the unit effective April 20, 2015 and the new Tenants paid partial rent for the remainder of April 2015.

The Landlord now seeks to recover the unpaid rent, parking, and late fees for all of March and April 1 – 19, 2015. Late fees are provided for in section # 6 of the tenancy agreement under the heading of Arrears.

#### Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on March 5, 2015 and the effective date of the Notice is March 15, 2015. The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **March 15, 2015**. The Tenants vacated the unit and returned possession of the unit to the Landlord on April 15, 2015. The Landlord did her due diligence in re-renting the unit effective April 20, 2015.

The Landlord claimed unpaid rent and parking fees of \$1,495.00 (\$1,445.00 + \$50.00) that was due March 1, 2015, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent and fees in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent and parking for March 2015 in the amount of **\$1,495.00**.

As noted above this tenancy ended **March 15, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and use and occupancy of the unit from April 1 to April 19, 2015, not rent. The Tenants remained in possession of the rental unit until April 15, 2015, and the Landlords were able to re-rent the unit effective April 20, 2015. Therefore, I conclude the Landlord is entitled to use and occupancy and loss of rent and parking for 19 days from April 1<sup>st</sup> to April 19, 2015, at a daily rate of \$49.15, ( $\$1,495.00 \times 12 \text{ mo} \div 365 \text{ days}$ ) for a total amount of **\$933.85**.

The tenancy agreement provides for \$25.00 late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the March 1, 2015 rent was late, as it was not paid. Therefore I find the Landlord has proven the loss and I award their claim for March 2015 late fees in the amount of **\$25.00**.

As noted above, this tenancy ended **March 15, 2015**, in accordance with the 10 Day Notice. Provisions such as late payment fees provided in the tenancy agreement are no longer in effect once a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for April 2015, and the claim is dismissed, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid March 2015 Rent & parking	\$1,495.00
Use & occupancy & Loss of rent & parking April 2015	933.85
Late payment fee for March 2015	25.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,503.85
<b>LESS:</b> Security Deposit \$722.56 + Interest 0.00	<u>-722.56</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,781.29</u></b>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,781.29**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia 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: April 17, 2015

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Residential Tenancy Branch

