



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MNR, FF

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant TA ("tenant") and the two landlords attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to speak on behalf of the other "tenant DC" named in this application, as an agent at this hearing.

The tenant confirmed personal receipt of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent, dated April 3, 2015 ("10 Day Notice"), on the same date. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 10 Day Notice.

The tenant confirmed personal receipt of the landlords' application for dispute resolution hearing package ("Application") on April 15, 2015. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlords' Application.

The landlords confirmed receipt of the tenants' written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' written evidence package.

### Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

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

### Background and Evidence

The landlords confirmed that this month-to-month tenancy began on September 7, 2014. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants on September 7, 2014 and the landlords continue to retain this deposit. The landlords provided a copy of the tenancy agreement with their Application. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice, indicating that rent in the amount of \$700.00 was due on April 1, 2015. The notice indicates an effective move-out date of April 13, 2015. Both parties agreed that the tenants currently owe unpaid rent of \$50.00 for January 2015 and \$700.00 for each of April and May 2015. Both parties agreed that the tenant attempted to pay rent on April 23, 2015 and the landlords refused to accept the rent. The landlords indicated that the tenant only attempted to pay \$350.00 on the above date, while the tenant confirmed that she attempted to pay the full rent owing of \$700.00. The tenant confirmed that the landlords agreed to allow her to pay rent for April 2015 at the end of the month, while the landlords denied any such agreement and stated that rent was due on April 1, 2015. The landlords are also seeking to recover the \$50.00 filing fee for this Application from the tenants.

### Analysis

Both parties agreed that the tenants failed to pay the full rent due on April 1, 2015, within five days of receiving the 10 Day Notice. Although the landlords refused to accept the rent, which they are not entitled to do, the tenants did not attempt to pay the full rent due within the five day period. I do not accept the tenant's evidence that the landlords agreed to a later rent payment date at the end of April 2015. The tenant did not provide any written or witness evidence of this fact and both landlords denied this fact. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on April 13, 2015, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by April 13, 2015. As this has not occurred, I find that the landlords are entitled to an Order of Possession. At the hearing, the landlords agreed that the tenants could vacate the rental unit by June 15, 2015.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the landlords are entitled to \$1,450.00 in rental arrears for January, April and May 2015, as both parties agreed that the tenants owe this unpaid rent.

The landlords continue to hold the tenants' security deposit of \$400.00. Although the landlords did not apply to retain the tenants' security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit of \$400.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this Application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for their Application.

### Conclusion

I grant an Order of Possession to the landlords effective **at 1:00 p.m. on June 15, 2015**.

Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$1,100.00 against the tenants as follows:

Item	Amount
Unpaid January 2015 Rent	\$50.00
Unpaid April 2015 Rent	700.00
Unpaid May 2015 Rent	700.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Award</b>	<b>\$1,100.00</b>

The landlords are provided with a monetary order in the amount of \$1,100.00 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 28, 2015

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Residential Tenancy Branch

