



# 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, FF

### Introduction

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

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

The tenants did not attend this hearing, although I waited until 11:11 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenants' door on July 7, 2015. Based on this undisputed sworn testimony and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on July 10, 2015, the third day after its posting.

The landlord gave sworn testimony and provided written evidence that the landlord sent both tenants copies of the dispute resolution hearing package and evidence package on July 23, 2015. The landlord provided copies of the Canada Post Customer Receipts and Tracking Numbers to confirm these mailings. During the hearing, the landlord checked Canada Post's Online Tracking System and confirmed that these packages were returned to the landlord as unclaimed. Based on this evidence and in accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with these packages on July 28, 2015, five days after these registered mailings.

At the commencement of the hearing, the landlord testified that the tenants' rent for August 2015, along with NSF fees and an administrative fee for late payment of rent are

still owing from this tenancy. The landlord asked that these amounts be added to the landlord's claim for a monetary award. The landlord's monetary claim is increased from \$1,195.00 to \$2,404.97 accordingly to reflect these changed circumstances following the commencement of the landlord's application for dispute resolution. The landlord said that the tenants' pre-authorized withdrawal of funds for September 2015 was received, so no monetary award for that month was requested by the landlord.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

The landlord provided a copy of the one-year fixed tenancy agreement signed by all parties on November 13, 2013. This agreement covered the period from December 1, 2013 until November 30, 2014. At the expiration of the initial fixed term, the tenancy continued as a periodic tenancy. The initial monthly rent was set at \$1,135.00, payable in advance on the first of each month. Although the landlord said that the monthly rent has subsequently increased to \$1,159.97, the landlord provided no written evidence to demonstrate that a Notice of Rent Increase had been issued to the tenants for this increased rental amount. As such, I can only consider the monthly rent of \$1,135.00 as set out in the copy of the agreement entered into written evidence by the landlord. The landlord continues to hold the tenants' \$567.50 security deposit paid on November 13, 2013.

The landlord's 10 Day Notice identified \$1,165.00 in unpaid rent owing as of July 1, 2015, as well as additional \$5.03 in utilities. The landlord testified that the tenants have not paid the amount of unpaid rent and utilities owing at that time in full after receiving the 10 Day Notice.

The landlord asked for an Order of Possession for unpaid rent plus a monetary award of \$1,159.97 for July 2015 rent, plus \$25.00 for an NSF cheque fee, and a \$25.00 administration fee. Both of these latter items were identified as payable in paragraph 10 of the tenancy agreement between the parties. The landlord reduced the amount of the monetary award requested by \$14.97, an amount credited to the tenants for previous payments.

#### Analysis

There is undisputed evidence that the tenants failed to pay the amount legally owing for rent and utilities on the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenants have not made 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by July 20, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed sworn testimony and supporting written evidence, including copies of the rent ledger for this tenancy and the terms of the written tenancy agreement, I find that the landlord is entitled to a monetary award of \$1,135.00 for unpaid rent for each of July and August 2015. I limit the landlord to these amounts as the landlord provided no evidence to demonstrate that the landlord was legally entitled to a higher monthly rent.

I also allow the landlord a monetary award totalling \$50.00 for two NSF charges, and totalling \$50.00 for two administration charges for late rent payment fees. Both of these items are outlined in the tenancy agreement. I reduce the amount of the monetary award by the \$14.97 identified as a credit to the tenants in the landlord's application.

As the landlord has failed to provide sufficient details to support any claim for unpaid utilities, I dismiss this element of the landlord's claim with leave to reapply for months not included in the landlord's original claim.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 landlord's favour under the following terms, which allows the landlord to obtain a monetary award for unpaid rent and associated fees, plus the filing fee and to retain the tenants' security deposit:

Item	Amount
Unpaid July 2015 Rent + NSF + Administration Fee (\$1,135.00 + \$25.00 + \$25.00 = \$1,185.00)	\$1,185.00
Unpaid August 2015 Rent + NSF + Administration Fee (\$1,135.00 + \$25.00 + \$25.00 = \$1,185.00)	1,185.00
Less Credit	-14.97
Less Security Deposit	-567.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,837.53</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 2, 2015

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Residential Tenancy Branch

