



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction and Preliminary Matters

This hearing was convened to deal with the landlords' application for dispute resolution for a direct request proceeding under the Residential Tenancy Act (the "Act"), seeking an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") and a monetary order for unpaid rent.

In an Interim Decision dated October 26, 2015, an adjudicator ordered that the direct request proceeding be reconvened to a participatory hearing in order to clarify the day of the month upon which rent was due, as that date was omitted in the written tenancy agreement. Further the adjudicator in that Interim Decision of October 26, 2015, ordered the landlords to serve the tenants with the Interim Decision and the Notices of the Reconvened Hearing ("hearing package") within 3 days of receiving the Interim Decision.

At this hearing, landlord "SC" submitted that she served both tenant hearing packages to tenant "TW" at her place of employment, who promised to also deliver the hearing package to tenant "AH".

Section 89(1) of the Residential Tenancy Act requires that the applicant serve the respondent (the tenants in this case) with the hearing package by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, the landlords confirmed that only TW had been served with the hearing package as required by section 89(1), and I have therefore proceeded in this hearing against only that tenant. AH was removed from any further consideration in this matter.

Additionally, the landlord submitted that the tenants vacated the rental unit on or about October 22, 2015, and I have therefore amended their application to remove their request for an order of possession for the rental unit. The hearing proceeded only upon the landlords' request for a monetary order and to clarify the day upon which rent was due.

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

I have reviewed all oral and documentary 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.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order comprised of unpaid rent?

#### Background and Evidence

The landlords confirmed the details of the tenancy, as noted in the Interim Decision, which is incorporated by reference herein.

The landlords confirmed that the tenants were obligated to pay rent by the 1<sup>st</sup> day of each month, and that they vacated the rental unit owing unpaid rent of \$900.00 for September and October 2015, each, and unpaid utilities of \$100.00 for September and October 2015, each.

#### Analysis

I have reviewed the landlords' documentary evidence and accept that the tenants were served with the Notice as submitted by the landlords.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I accept the landlords' documentary and oral evidence that the tenants failed to pay the rent owed under the terms of the tenancy agreement.

Therefore, I find that the landlords are entitled to a monetary order for unpaid rent in the amount of \$1800.00.

As to the landlords' claim of \$100.00 for unpaid utilities for September and October each, section 46(6) of the Act states that a landlord may treat unpaid utilities as rent for the purpose of the Notice if the tenancy agreement provides that the tenant pay utility charges to the landlord and they remain unpaid 30 days after written demand for the payment. In this case, the landlords included unpaid utilities in the portion of the Notice for unpaid rent and I did not find any evidence that the landlords had issued a written demand for the utilities. I therefore dismiss the landlord's claim for \$200.00 for unpaid utilities, with leave to reapply.

Due to the above, I grant the landlords a monetary order in the amount of \$1800.00 against tenant TW, pursuant to section 67 of the Act, comprised of rent owed, which is enclosed with the landlords' Decision. This order is a legally binding, final order, and should the tenant fail to pay the landlords 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 tenant is advised that costs of such enforcement may be recovered from the tenant.

### Conclusion

The landlords' application for a monetary order for unpaid rent has been granted.

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: December 24, 2015

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Residential Tenancy Branch

