



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Action Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for money owed or compensation for damage or loss and for unpaid rent, for authority to retain the tenants' security deposit and pet damage deposit, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the telephone conference call hearing; the tenants did not attend.

The landlord testified and provided documentary evidence that they served each of the tenants separately with the Application for Dispute Resolution and Notice of Hearing by registered mail on December 21, 2015. The landlord supplied testimony of the tracking number of the registered mail.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and 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 an order of possession for the rental unit due to unpaid rent, to retain the tenants' security deposit and pet damage deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on July 1, 2015, monthly rent payable by the tenants is \$1700.00, due on the first day of the month, and a security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on December 2, 2015, the tenants were served with the Notice, by attaching it to the tenants' door, listing unpaid rent of \$3125.00 as of December 1, 2015. The effective vacancy date listed on the Notice was December 15, 2015.

The Notice sets out for the benefit of the tenants that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenants made two rent payments since the Notice was issued, that being a payment of \$1000.00 on December 21 and \$400.00 on December 23, 2015. As of the date of the hearing, the tenants owed \$3425.00 in unpaid rent.

The landlord has also claimed the amount of \$50.00 for a late payment fee of \$25.00 each for December 2015 and January 2016.

I have no evidence before me that the tenants applied to dispute the Notice.

Analysis

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. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

As such, I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, owed the rent listed, with the exception of the inclusion of a late payment fee of \$25.00, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, December 15, 2015.

I therefore find that the landlord is entitled to an order of possession for the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenants.

As such, I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As to the landlord's monetary claim, I also find that the landlord submitted sufficient, unopposed evidence to prove that the tenants owe the amount of \$3425.00 in unpaid rent through January 2015, due under the tenancy agreement. I grant the landlord a monetary award in this amount, pursuant to section 67 of the Act.

I also find the landlord is entitled to a monetary award of \$50.00 for late payment fees as allowed in the addendum to the written tenancy agreement signed by the parties, pursuant to section 67 of the Act.

I also grant the landlord recovery of their filing fee of \$50.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$3525.00, comprised of outstanding rent of \$3425.00 through January 2015, late payment fees of \$50.00, and the \$50.00 filing fee paid by the landlord for this application.

I direct the landlord to retain the tenants' security deposit of \$850.00 and the tenants' pet damage deposit of \$850.00 in partial satisfaction of their monetary award of \$3525.00, and grant the landlord a monetary order for the balance due, in the amount of \$1825.00.

The monetary order is enclosed with the landlord's Decision. Should the tenants fail to pay the landlord 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 tenants are advised that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord's application for an order of possession for the rental unit and 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: January 21, 2016

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Residential Tenancy Branch

