



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC

### 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 pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant did not attend this hearing, although I waited until 0952 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. 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 she served the tenant with the dispute resolution package (including all evidence) on 26 November 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Evidence After Hearing

At the hearing, the landlord indicated that the tenant had made payments on 30 November 2015 (\$309.50) and 16 December 2015 (\$1,309.50). I asked the landlord to explain the discrepancy between the amount of rent (\$1,251.00) and utilities (\$54.00 and \$2.46) and the amount paid by the tenant. I asked the landlord to provide me a ledger that accounts for the monthly overpayment of \$2.04).

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing.

Pursuant to rule 3.19, I ordered the landlord to submit a ledger. There is no prejudice to the tenant in fixing the parties mutual error as the correction benefits the tenant. Further, the error is for a nominal amount. The landlord provided the ledger. The ledger is correct, but the landlord's math in setting out the total amount claimed double counts the overpayment from the ledger. I have corrected for this error.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 October 2011. The parties entered into a fixed-term tenancy agreement on 1 October 2011. The fixed-term tenancy ended 1 October 2012. Monthly rent was initially \$1,200.00. Rent is currently \$1,251.00. The landlord continues to hold the tenant's security deposit in the amount of \$600.00, which was collected at the beginning of the tenancy.

The tenancy agreement includes an addendum. At clause 1 the addendum includes a liquidated damages clause:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this agreement that causes the landlord to end the tenancy before the end of the term as set out in section 2 (length of tenancy) of the signed Residential Tenancy Agreement or any subsequent fixed term, the tenant will pay to the landlord the sum of one and one-half months'; rent as liquidated damages and not as a penalty.

Clause 3 of the addendum sets out that the monthly utilities cost is \$54.00 for hydro and \$2.46 for water.

On 5 November 2015, the landlord issued the 10 Day Notice to the tenant. The landlord served this notice the same day by posting the 10 Day Notice to the tenant's door. The 10 Day Notice was dated 5 November 2015 and set out an effective date of 20 November 2015. The 10 Day Notice set out that the tenant failed to pay \$1,251.00 in rent that was due on 1 November 2015 and utilizes in the amount of \$56.50.

On 30 November 2015, the tenant paid \$309.50 towards his rental arrears. On 16 December 2015 the tenant paid \$1,309.50 towards his rental arrears.

The landlord claims for \$4,393.08:

Item	Amount
Unpaid Rent and Utilities	\$2,516.58
Liquidated Damages	1,876.50
<b>Total Monetary Order Sought</b>	<b>\$4,393.08</b>

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent in full within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 20 November 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided uncontested evidence that the tenant has unpaid rental and utility arrears totaling \$2,516.58. I find that the landlord has proven her entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord seeks enforcement of the liquidated damages clause. The liquidated damages clause is triggered where the tenancy ends before the end of the fixed term. The fixed term ended in 2012. I have not been provided with any subsequent agreement that would indicate that the tenancy continued on anything other than a

month-to-month basis. On this basis, the landlord is not entitled to any liquidated damages.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,916.58 for the amount of unpaid rent and utilities.

Item	Amount
Unpaid Rent and Utilities	\$2,516.58
Offset Security Deposit	-600.00
<b>Total Monetary Order</b>	<b>\$1,916.58</b>

The landlord is provided with this order 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.

The landlord is provided with a formal copy of an order of possession. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 22, 2016

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Residential Tenancy Branch

