



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR

### **Introduction**

This hearing was originally convened in response to an ex-parte / Direct Request application by the landlord pursuant to the *Residential Tenancy Act* (the Act) - adjourned to a participatory hearing. The landlord applies for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities - Section 67;

The landlord attended the hearing, however the tenant did not. The landlord provided evidence of their registered mail service dated January 08, 2016 which they claim was received by the tenant on January 15, 2016. The landlord testified the mail included their last amendment and all of the utility invoices from October through to December 2015. The landlord testified the tenant was served the Notice of Hearing by registered mail in December 2015. They further testified the tenant has not accepted any of the registered mail sent to them before January 08, 2016 and that the tenant denies receiving documents from the landlord served to them personally. I accept the landlord's testimony they served the tenant with the Notice of Hearing and 2 subsequent amendments to their application by registered mail in accordance with Section 89 of the Act. The landlord was given opportunity to be heard, to present evidence and make submissions.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence is as follows. The tenancy began April 01, 2015 as a written tenancy agreement of which I have been provided a copy. The rental unit is a house separate from the landlord's residence. The landlord testified that as of January 26, 2016 the tenant appears to still reside in the house. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$700.00 which they retain in trust. The tenant failed to pay rent in the month of November 2015 and on November 04, 2015 the landlord personally served the tenant with a notice to end tenancy for non-payment of rent and utilities. The landlord testified the tenant further failed to pay rent in the month of December 2015 and January 2016 and amended their claim respectively. The landlord seeks the unpaid rent.

The landlord also claims the tenant has not satisfied payment of the electricity and gas utilities since August 2015 despite providing the tenant with copies of the utility invoices and repeated requests for their payment.

The landlord provided a copy of the tenancy agreement indicating that utilities are not included in/for the rent. The landlord testified the parties had a verbal agreement the tenant was solely responsible for 75% of the electricity and gas utilities. The landlord submitted copies of these utilities billed in October to December 2015. The invoices indicate the utilities as dedicated to the rental unit, however mailed to the landlord. The landlord seeks 75% of the utilities for October, November and December 2015 as follows:

Total utilities for October 2015 = \$241.96 x .75 = claim	\$181.47
Total utilities for November 2015 = \$224.30 x .75 = claim	\$168.22
Total utilities for December 2015 = \$315.64 x .75 = claim	\$236.73

### **Analysis**

Based on the undisputed evidence of the landlord I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on all of the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for unpaid rent and for utilities. The security deposit will be off-set from the award made herein.

***Calculation for Monetary Order***

Rental arrears: November and December 2015. January 2016 (\$1400.00 x 3 )	\$4200.00
Total utilities for October 2015	\$181.47
Total utilities for November 2015	\$168.22
Total utilities for December 2015	\$236.73
<i>Less Security Deposit</i>	<i>-\$700.00</i>
<b>Total Monetary Award to landlord</b>	<b>\$4086.42</b>

**Conclusion**

**I grant** an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I Order** that the landlord retain the deposit of \$700.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$4086.42**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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 27, 2016

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Residential Tenancy Branch

