



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the application of the landlord for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The landlord originally applied for an order of possession for unpaid rent or utilities and for a monetary order unpaid rent or utilities through the Direct Request process.

On November 2, 2015, an Adjudicator wrote an Interim Decision adjourning the landlord’s original Application for Dispute Resolution submitted through the Direct Request process to a participatory hearing scheduled for January 8, 2016 at 9:30 a.m. Pacific Time. The Interim Decision dated November 2, 2015 should be read in conjunction with this Decision.

The landlord attended the teleconference hearing as scheduled. The hearing process was explained to landlord and the landlord was given an opportunity to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on each of the tenants by registered mail, comprised of one package for each of the two tenants, addressed to the rental unit address and that both tenants were residing in the rental unit as of the date both packages were mailed on November 2, 2015. Two registered mail tracking numbers were submitted in evidence by the landlord. According to the online registered mail website, the packages were unclaimed and returned to the sender. Section 90 of the *Act* states that documents served by mail are deemed served five days after they are mailed. Based on the above, I find that both

tenants were deemed served as of November 7, 2015, which is five days after the registered mail documents were mailed to the tenants. I note that refusal or neglect on the part of the tenants to pick up and accept registered mail does not constitute grounds for a Review Consideration.

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that the tenants vacated the rental unit after November 5, 2015, since the landlord's application was filed. As a result, the landlord requested to withdraw the landlord's request for an order of possession as the tenants have already returned possession of the rental unit by vacating the rental unit.

Furthermore, the landlord testified that in addition to the unpaid portion of rent of \$400.00 for September 2015 and the full unpaid rent for October of 2015 of \$1,900.00, the tenants did not vacate the rental unit until after November 5, 2015 and owe November 2015 unpaid rent also as rent is due on the first day of each month. As a result, the landlord requested to amend his application to include unpaid November 2015 rent of \$1,900.00. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would have known or ought to have known that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to \$4,200.00, which consists of the \$400.00 unpaid portion of rent for September 2015, \$1,900.00 for unpaid October 2015 rent, and \$1,900.00 for unpaid November 2015 rent pursuant to section 64(3) of the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on March 1, 2015 and required that the tenants provide vacant possession of the rental unit as of February 29, 2016. Monthly rent in the amount of \$1,900.00 was due on the first day of each month. Water was included in the monthly rent; however, electricity and gas were not included in the monthly rent. The tenants paid a security deposit of \$950.00 and a pet damage deposit of \$950.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 16, 2015 was served on the tenants and the tenants did not dispute the 10 Day Notice. Although the effective vacancy date of the 10 Day Notice was October 31, 2015 the tenants did not vacate the rental unit until after November 5, 2015.

The landlord testified that the tenants owe \$400.00 for the unpaid portion of September 2015 rent, the full unpaid rent for October of 2015 of \$1,900.00, and due to the tenants not vacating the rental unit until after November 5, 2015, they owe November 2015 unpaid rent also as rent is due on the first day of each month. In total, the landlord stated that the tenants owe \$4,200.00 in unpaid rent.

The landlord verbally requested to retain the tenants' security deposit and pet damage deposit towards any unpaid rent monetary amount awarded if he was so entitled under the *Act*.

### Analysis

Based on the undisputed testimony of the landlord and the documentary evidence before me, and on the balance of probabilities, I find the following.

**Unpaid rent** – Section 26 of the *Act* requires that tenants pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I accept the landlord's undisputed testimony and I find that the tenants breached section 26 of the *Act* by failing to pay a total of **\$4,200.00** as claimed by the landlord.

The landlord continues to hold the tenants' security deposit of \$950.00 and pet damage deposit of \$950.00 which have accrued no interest since the start of the tenancy. As the landlord's claim had merit, I grant the landlord the recovery of the **\$50.00** filing fee pursuant to section 72 of the *Act*.

I find that the landlord has established a total monetary claim of **\$4,250.00** as follows:

|                  |  |                   |
|------------------|--|-------------------|
| Item 1           | Unpaid portion of September 2015 rent  | \$400.00          |
| Item 2           | Unpaid October 2015 rent               | \$1,900.00        |
| Item 3           | Unpaid November 2015 rent              | \$1,900.00        |
| Item 4           | Recovery of the cost of the filing fee | \$50.00           |
| <b>SUB-TOTAL</b> |  | <b>\$4,250.00</b> |

|  |                    |
|--|--------------------|
| <i>Less tenants' \$950.00 security deposit with \$0.00 in interest plus the tenants' \$950.00 pet damage deposit with \$0.00 in interest</i> | <i>-\$1,900.00</i> |
| <b>TOTAL AMOUNT OWING BY TENANTS TO LANDLORD</b>   | <b>\$2,350.00</b>  |

Pursuant to section 72(2) of the *Act*, I **authorize** the landlord to retain the tenants' full security deposit with interest of \$950.00 and pet damage deposit with interest of \$950.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$2,350.00**.

### Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$4,250.00 and has been authorized to retain the tenants' full security deposit including interest of \$950.00 and pet damage deposit including interest of \$950.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$2,350.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 18, 2016

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Residential Tenancy Branch

