



# 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 dealt with the landlords' 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 pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

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 LK (the landlord) attended the hearing on behalf of both landlords and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the landlords served the tenant with the dispute resolution package (including her initial package of evidence) on 19 December 2015 by registered mail. The landlords 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.

The landlord testified that the landlords served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 6 December 2015 by posting the notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

The landlord testified that she served the landlords' late evidence to the tenant by delivering it to her mail box on 31 January 2016. On the basis of this evidence, I am satisfied that the tenant was deemed served with the evidence pursuant to sections 88 and 90 of the Act. This late evidence relates to payments received from the tenant for the rent arrear and February. Although this evidence was served outside the time limit prescribed for service in rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, I accept the landlords' evidence as it documents payments made by the tenant that reduce the amount of the monetary order sought and thus does not prejudice the tenant.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

#### 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 landlords' claim and my findings around it are set out below.

This tenancy began 1 November 2015. The parties entered into a written tenancy agreement on 20 October 2015. Monthly rent of \$1,300.00 is due on the first. The landlords continue to hold the tenant's security deposit in the amount of \$650.00, which was collected at the beginning of the tenancy.

On 6 December 2015 the landlords issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 6 December 2015 and set out an effective date of 16 December 2015. The 10 Day Notice set out that the tenant failed to pay \$934.42 in rent that was due on 1 December 2015.

The landlord testified that the tenant does not have any current rent arrears and testified to the following record of payment over the course of the tenancy:

Item	Amount
November Rent	\$1,300.00
22 October 2015 Payment	-660.00
November Cheque from MSDSI	-1,015.58
December Rent	1,300.00
11 December 2015 Payment	-375.00
16 December 2015 Cheque from MSDSI	-1,015.58
January Rent	1,300.00
20 January 2016 Cheque from MSDSI	-1,015.58
22 January 2016 Payment	-900.00
February Rent	1,300.00
2 February 2016 Payment	-218.26
<b>Total Arrears</b>	<b>\$0.00</b>

The landlord testified that she issued receipts that the payments received 20 and 22 January 2016 were received by the landlords on the basis that the tenant was paying for her use and occupancy of the rental unit.

The landlord testified that she has not spoken to the tenant about this hearing. The landlord testified that she is not aware of any reason that would entitle the tenant to deduct any amount from her rent.

### 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 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 19 December 2015, the corrected effective date of the notice. The tenant has paid for her use and occupancy of the rental unit for February. I find that the landlords are entitled to an order of possession effective 29 February 2016.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application. Pursuant to paragraph 72(2)(b), the landlords may choose to withhold the monetary award from the tenant's security deposit in which case the value of the tenant's security deposit is reduced to \$600.00.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$50.00. The landlords are 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 landlords are 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: February 04, 2016

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Residential Tenancy Branch

