



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### 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;
- 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave undisputed affirmed testimony. The landlord stated that both tenants were served with the notice of hearing package(s) and the submitted documentary evidence in person on February 2, 2016 and then again with the amended application for dispute by Canada Post Registered Mail on March 8, 2016. Both tenants confirmed that no documentary evidence was submitted on their behalf. I accept the undisputed affirmed evidence of both parties and find that as both parties have attended and have confirmed receipt of the submitted documentary evidence, both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation or damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

Both parties confirmed that there is no signed tenancy agreement but that the tenancy began in May of 2015 on a month-to-month basis. The monthly rent is \$1,250.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$650.00 was paid.

Both parties confirmed that the landlord served the tenants with the 10 Day Notice dated January 21, 2016 in person on January 21, 2016. The 10 Day Notice stated that the tenants failed to pay rent of \$1,735.00 + \$400.00 and \$580.76 in Utilities that was due on January 1, 2016. The 10 Day Notice also display an effective end of tenancy date of January 31, 2016.

The landlord stated that the tenants failed to pay rent and utilities totalling, \$5,124.76 which consists of:

\$485.00	December Rent Arrears
\$1,250.00	Unpaid January Rent
\$1,250.00	Unpaid February Rent
\$1,250.00	Unpaid March Rent
\$580.76	Utility Arrears
\$212.00	Utility Arrears
\$97.00	Utility Arrears

The tenant, K.W. stated, "that's true". The tenant, K.W. stated that because of issues during the tenancy, the tenants have withheld rent because of flooding which caused damage to the tenants' belongings.

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that they were entitled to deduct amounts for emergency repairs that she had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

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 landlord testified that the tenant failed to pay rent and utilities. The tenant, K.W admitted that they did not pay rent and utilities as claimed by the landlord.

As the tenants have failed to pay their rent and utilities in full when due, I find that the 10 Day Notice issued January 21, 2016 is valid. The landlord has provided sufficient evidence to satisfy me that the tenants have failed to pay rent after the 10 Day Notice dated January 21, 2016 was served in person to them on January 21, 2016. The tenants failed to file an application to dispute the 10 Day Notice. As the effective date of the 10 Day Notice of January 31, 2016 has passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenants admitted that they have not paid rent and utilities as claimed by the landlord. I find that the landlord is entitled to \$5,124.76 as claimed.

The landlord applied to keep the tenant's \$65.00 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.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,574.76 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rental Arrears	\$485.00
Unpaid January 2016 Rent	1,250.00
Unpaid February 2016 Rent	1,250.00
Unpaid March 2016 Rent	1,250.00
Unpaid Utilities	580.76
Unpaid Utilities	212.00
Unpaid Utilities	97.00
Offset Security Deposit	-650.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$4,574.76</b>

The landlord is provided with these orders 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 these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 16, 2016

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Residential Tenancy Branch

