



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNDC MNR 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, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:43 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:30 am. The landlord's representative attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord's representative testified that the landlord's Application for Dispute Resolution package ("ADR") was sent to the tenants by registered mail on February 4, 2016. She testified that the package was sent to the address of the tenancy where, at the time of the mailing, the tenants continued to reside. She testified that the package was refused for pick up. Based on the sworn, undisputed testimony of the landlord's representative, I find that the tenants were duly served with the landlord's ADR on February 9, 2016.

The landlord's representative testified that the tenants vacated the rental unit on or about February 10, 2016. Therefore, the landlord's representative withdrew the application for an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and/or other damage or loss as a result of this tenancy? Is the landlord entitled to retain a portion of the tenants' security deposit towards any monetary order? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on January 1, 2015 as a one year fixed term with a rental amount of \$2000.00 payable on the first of each month. The landlord submitted a copy of the residential tenancy agreement as evidence for this hearing. The landlord testified that she continues to hold a \$1000.00 security deposit paid by the tenants at the outset of this tenancy. The landlord has applied to retain the security deposit towards rental arrears.

The landlord originally applied for an Order of Possession for unpaid rent for the month of January 2016. The landlord testified that the tenant did not pay rent of \$1000.00 due on January 1, 2016. At that time, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenants remained in the rental unit and, again, did not pay rent on February 1, 2016. The landlord has withdrawn the application for an order of possession as the tenants have now vacated the rental unit. However, the landlord sought to recover the cost of filing this application as well as two months' rent totalling \$4000.00.

The landlord provided sworn, undisputed testimony and documentary evidence to support the testimony that the tenants did not pay rent in January 2016 or February 2016. The landlord testified that the tenants remained in the rental unit until on or about February 10, 2016.

Analysis

I find that the landlord is entitled to receive an order for unpaid rent for January and February 2016. The landlord provided sworn undisputed testimony that the tenants did not pay rent in January or February 2016. I accept this uncontested evidence offered by the landlord with respect to the non-payment of rent. I also accept the uncontested evidence of the landlord that the tenants continued to reside in the rental unit until approximately February 10, 2016. Finally, I accept the uncontested evidence of the landlord that the rental unit was not re-rented until March 1, 2016.

Given that I have found the landlord's evidence to be uncontested, supported by documentary evidence and reasonable in its presentation, I am issuing the attached monetary order that includes the landlord's application for \$4000.00 in unpaid rent.

The landlord testified that she continues to hold a security deposit of \$1000.00 plus any interest from start of this tenancy to the date of this decision for this tenancy. There is no interest payable for this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlord withdrew the application for an Order of Possession.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for January 2016	\$2000.00
Rental Arrears for February 2016	2000.00
Less Security Deposit	-1000.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$3100.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 29, 2016

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Residential Tenancy Branch