



# 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 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 other fees pursuant to section 67; authorization to retain the tenants' security deposit in 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 11:16 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to make submissions with respect to this application.

The landlord testified that the 10 Day Notice to End Tenancy ("10 Day Notice") was served to both tenants by posting it on the door of their rental unit on January 5, 2016. She testified that the tenants contacted her after the 10 Day Notice was issued. The landlord testified that the Application for Dispute Resolution package ("ADR") was served to both tenants individually by registered mail on February 2, 2016. She submitted receipts and tracking information for the registered mailings. I find that the tenants were served with the 10 Day Notice on January 8, 2016 (3 days after its posting) and I find that the tenants were deemed served with the landlord's ADR on February 7, 2016 (5 days after their registered mailings).

### 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 to include any amount of unpaid rent as well as recovery of other fees owed by the tenants? Is the landlord entitled to retain all or part of the tenants' security deposit? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The landlord testified that this tenancy began as a fixed term on March 1, 2015 with a rental amount of \$750.00 payable on the first of each month. The landlord testified that the tenants continue to reside in the rental unit. The landlord testified that she continues to hold the \$375.00 security deposit and \$300.00 pet damage deposit paid by the tenants on February 21, 2015.

The landlord has applied for an Order of Possession for unpaid rent for the month of January 2016. The landlord testified that the tenants did not pay rent of \$750.00 due on January 1, 2016. The landlord testified that the tenants generally paid their rent in full on time prior to January 2016. However, she testified that, in the months of August and September 2015, the tenants had failed to pay rent on time but had ultimately paid to the landlord the outstanding amount and no further action was required.

After the tenants failed to pay January 2016 rent, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on January 5, 2016. The landlord testified that one of the tenants contacted her to say that he was not aware that rent was unpaid. The landlord testified that \$750.00 was paid to the landlord on January 26, 2016. The landlord submitted a copy of the receipt issued to the tenants at that time indicating that the payment made was "for use and occupancy only".

The landlord testified that the tenants did not pay the February 2016 rent on February 1, 2016. The landlord testified that the tenants paid the outstanding February rental amount of \$750.00 on February 22, 2016. At that time, the landlord again issued a receipt for payment that indicated "for use and occupancy only". The landlord submitted that an amount of \$100.00 representing four months' late fees (August, September 2015 as well as January and February 2016) is the only outstanding balance owed by the tenants.

The landlord applied for an Order of Possession. The landlord testified that she has spoken to both tenants prior to this hearing regarding the landlord's intention to end the tenancy and with regard to this hearing. She testified that the tenants "were not happy about the situation".

### Analysis

The tenants failed to pay the January 2016 rent within five days of receiving the 10 Day Notice to End Tenancy. The rental arrears paid by the tenants after this time period were received by the landlord who provided receipts indicating "for use and occupancy only" to indicate the landlord's intention to continue to seek to end the tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to either pay the rental amount within 5 days or to apply to dispute the notice to end tenancy 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

January 18, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I accept this uncontested evidence offered by the landlord that, while the tenants have paid the rental arrears owed, they have not paid the \$25.00 late fees for the months where rent was paid late. The landlord provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the month of January 2016 and a \$25.00 late fee for the month of February 2016. I find that the landlord did not provide a clear indication to the tenants or in evidence that the tenants were required to pay late fees in August and September 2015. Therefore, I am issuing the attached monetary order that includes the landlord's application for late fees totalling \$50.00.

The landlord testified that she continues to hold a security deposit and pet damage deposit totalling \$675.00. I will allow the landlord to reduce the security deposit in satisfaction of the monetary award issued to the landlord as a result of this application.

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

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenants. If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I allow the landlords to reduce the tenants' security deposit by \$100.00 for the cost of the filing fee for this application and two late fees. The tenants' security deposit will be reduced from \$375.00 to \$275.00.

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 30, 2016

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Residential Tenancy Branch