



# 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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent and utilities?

### Background and Evidence

The tenancy started on January 1, 2016. Rent of \$900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit.

The Landlord states that the Tenants failed to pay rent on May 1, 2016 and that on May 3, 2016 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Landlord states that on the same day the Tenants paid \$320.00 for rent and no other monies have since been received.

The Tenants state that they tried to pay the rent but the Landlord refused. The Tenants could not say when they tried to pay the rent. The Tenants state that they can pay all the outstanding rent today if the tenancy can continue. The Landlord states that she will accept the rent but is not waiving her right to an order of possession as the Tenants are smoking in the unit.

A second tenancy agreement was entered into on March 20, 2016 amending the original tenancy agreement to include, inter alia, a 30% charge for hydro and a no smoking provision. The Landlord states that the Tenants have not paid the utilities and that the Landlord has not given the Tenants any bill for the utilities. The Landlord claims an estimated \$320.00. No bills were provided for this amount.

#### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As the Tenants could not say when they attempted to pay the rent I find that the Tenants did not try to pay the rent within 5 days of receiving the Notice. As the Tenants did not dispute the Notice I find that the Tenants are conclusively presumed to have accepted the end of the tenancy and that the Landlord is entitled to an order of possession.

I accept the Tenants' persuasive evidence that the Landlord refused the rent after the 5 day period. As rent is payable until a tenancy ends I find that the Landlord is entitled to unpaid rent of **\$580.00** for May 2016 and as the tenancy will end very shortly to **\$540.00** (900.00/30 x 18) for the period June 1 to 18, 2016 inclusive. The Landlord was informed at the hearing that in order to obtain payment for utilities the Landlord would have to provide copies of the bills to the Tenants first. I note that the Landlord claimed

an estimated amount of utilities for May and all of June 2016. As the Landlord provided no utility bills to the Tenants and no utility bills to support its claim at the hearing I dismiss this claim.

As the Landlord's application has met with success on the order of possession I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,220.00**. Deducting the security deposit of **\$450.00** plus zero interest leaves **\$770.00** owed by the Tenants to the Landlord.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$770.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 14, 2016

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Residential Tenancy Branch