



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 0948 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that his agent personally served the tenants with the dispute resolution package (including all evidence before me) on 30 May 2016. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that his agent personally served the tenants with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 16 May 2016. The landlord provided me with a witnessed proof of service statement that set out the same. On the basis of this evidence, I am satisfied that the tenants were served with the 1 Month Notice pursuant to section 88 of the Act.

### Preliminary Issue – Scope of Landlord's Application

The landlord's application indicates that he was applying for an end to tenancy as the tenants had not paid rent or utilities. I informed the landlord at the hearing that typically this reason was used where the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The only current notice is the 1 Month Notice. The 1 Month Notice was given to the tenants as the landlord alleges that they have been repeatedly late paying rent. In this application, the landlord also asks for a monetary order for the amount of the outstanding rent.

The reasons set out on the application for dispute resolution form are categorized for administrative purposes. As the reason for the 1 Month Notice relates to late payment and the tenants are currently in an arrears position, I find that the application provides adequate information so as to put the tenants on notice of the issues being addressed in today's hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

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

This tenancy began 20 May 2015. Monthly rent in the amount of \$650.00 is due on the first. The landlord testified that the parties did not enter into a written tenancy agreement in respect of this tenancy.

The landlord testified that the tenants currently have \$882.00 in rent arrears. The landlord testified that the arrears consist of \$232.00 in January, \$325.00 in February and \$325.00 in March 2016.

On 16 May 2016 the landlord issued a 1 Month Notice to the tenants. The 1 Month Notice was dated 16 May 2016 and set out an effective date of 30 June 2016. The 1 Month Notice set out that it was given as the tenants are repeatedly late paying rent the

tenants or person permitted on the property by the tenants has put the landlord's property at significant risk.

The tenants did not apply to dispute the 1 Month Notice.

The landlord claims for \$882.00:

Item	Amount
Unpaid January Rent	\$232.00
Unpaid February Rent	325.00
Unpaid March Rent	325.00
<b>Total Monetary Order Sought</b>	<b>\$882.00</b>

### Analysis

Pursuant to subsection 47(4) a tenant must dispute a notice given pursuant to section 47 within ten days from its receipt. In accordance with subsection 47(5), where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenants received the 1 Month Notice on 16 March 2016. This means that the tenants had until 26 March 2016 to apply to this Branch to cancel the 1 Month Notice. The tenants did not make any application.

The landlord has provided arguable evidence that shows that the tenants did not pay rent when due under the tenancy agreement for the months of January, February, and March. The tenants have rent arrears totaling \$882.00. As the 1 Month Notice is not a nullity, I am bound by the conclusive presumption set out in subsection 47(5) of the Act. As such, the tenants are presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice, 30 June 2016. I issue the landlord an order of possession effective 30 June 2016.

Subsection 26(1) of the Act sets out that a tenant must pay rent when it is due under the tenancy agreement. There is nothing in the evidence before me to indicate the tenants were entitled to withhold any amount from rent.

On the basis of the landlord's sworn and uncontested testimony I find that the tenants have rent arrears totaling \$882.00. The landlord has proven his entitlement to this amount.

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 issue a monetary order in the landlord's favour in the amount of \$982.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid January Rent	\$232.00
Unpaid February Rent	325.00
Unpaid March Rent	325.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$982.00</b>

The landlord is 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 landlord is provided with a formal copy of an order of possession effective 30 June 2016. 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: June 27, 2016

---

Residential Tenancy Branch