



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened pursuant to the Landlord's Application for Dispute Resolution, dated December 23, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by B.R., who provided affirmed testimony. The Tenants did not attend the hearing.

The Landlord testified that the Tenants were served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on December 28, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants are deemed to have received the Landlord's Application package on January 2, 2017.

On behalf of the Landlord, B.R. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from August 28, 2014 to February 28, 2015. Thereafter, the tenancy proceeded on a month-to-month basis. Currently, rent in the amount of \$782.00 per month is due on the first day of each month.

On behalf of the Landlord, B.R. testified the Tenants have not made rent payments totalling \$4,740.00. This amount includes a longstanding arrears (\$3,606.00), December 2016 rent (\$352.00 outstanding), and January 2017 rent (\$782.00).

According to B.R., the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which was served on the Tenants by regular mail on December 8, 2016 (the "10 Day Notice").

Further, B.R. testified the Tenants continue to occupy the rental unit.

### Analysis

Based on the unchallenged and affirmed oral testimony and the documentary evidence submitted by the Landlord, and on a balance of probabilities, I find:

Section 46 of the Act permits a landlord to end a tenancy for unpaid rent or utilities. When rent remains unpaid on any day after the day it is due, a landlord can issue a notice to end tenancy for unpaid rent. On receipt, a tenant has five days to either pay rent or dispute the notice to end tenancy by filing an application for dispute resolution. Failure to do one of these two things results in the conclusive presumption that the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord served the 10 Day Notice by regular mail on December 8, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. Accordingly, I find the Tenants are deemed to have been served with the 10 Day Notice on December 13, 2016. However, the Tenants did not pay rent in full or file an application for dispute resolution within five days after receiving the 10 Day Notice. Indeed, January 2017 remains unpaid. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, section 26 of the *Act* confirms that a tenant must pay rent when due unless the tenant has a right under the *Act* to deduct all or a portion of rent. In this case, B.R. testified, and I find, that the Tenants did not pay rent when due on December 1, 2016, and have not made any payments since. The total amount of rent outstanding to January 31, 2017, is \$4,740.00. Accordingly, the Landlord is entitled to a monetary award of \$4,740.00 for unpaid rent.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

In light of the above, and pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$4,840.00, which is comprised of \$4,740.00 in unpaid rent and \$100.00 in recovery of the filing fee.

### Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after it is served on the Tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$4,840.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 24, 2017

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Residential Tenancy Branch