



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, 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 and damages pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant AW confirmed she represented both of the tenants named in the application.

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed receipt of both the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), and the application for dispute resolution hearing package (the "Application"). In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served copies of the landlord's Application and evidence.

During the hearing the landlord made an application to amend the monetary amount of the award sought. The landlord testified that there were calculation errors in the Application and the total arrears as at the date of the hearing is \$2,237.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim from \$2,208.00 to \$2,237.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed on the following facts. This month to month tenancy began in September, 2014. The current monthly rent is \$1,029.00 payable on the first of each month. A security deposit of \$500.00 was paid by the tenant at the start of the tenancy and is held by the landlord. The tenancy agreement provides that a \$25.00 late fee applies to late rental payments.

The landlord testified that the tenancy was in arrears by \$1,158.00 on December 3, 2016 when the 10 Day Notice was issued. The landlord testified that the tenant subsequently failed to pay the January rent and the total rental arrear is \$2,187.00 as at January 26, 2017 the date of the hearing. The landlord testified that a late charge of \$25.00 applies for each month of December and January for a total of \$50.00.

The tenant testified that she has not made rent payment for December and January and agrees with the calculation of arrears. The tenant testified that there are a number of deficiencies in the rental unit, principally an issue of black mold.

Analysis

Based on the testimony of the parties I find that the tenants were obligated to pay the monthly rent in the amount of \$1,029.00. I accept the parties' evidence that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period.

Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 16, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$2,187.00. I accept the landlord's undisputed evidence that a late fee of \$50.00 applies to the rental arrears. I issue a monetary award in the landlord's favour

for \$2,237 for unpaid rent and late fees as at January 26, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$500.00 in partial satisfaction of the monetary award issued in the landlords' favour.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,837.00 under the following terms, which allows the landlords to recover unpaid rent for the months of December, and January, and the filing fee for their application:

Item	Amount
Unpaid Rent November	\$129.00
Unpaid Rent December	\$1,029.00
Late Fee December	\$25.00
Unpaid Rent January	\$1,029.00
Late Fee January	\$25.00
Filing Fees	\$100.00
Less Security Deposit	-\$500.00
<b>Total Monetary Order</b>	<b>\$1,837.00</b>

The tenant must be served with this Order as soon as possible. Should the tenants 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.

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 27, 2017

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Residential Tenancy Branch