



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNR MNSD OPR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities;
- an application to keep all or part of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both the tenants and the landlord attended the hearing. The landlord was represented at the hearing by Property Manager, BC (the "landlord"), while the female tenant, PV appeared for the tenants. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was posted on the front door of the rental unit on January 11, 2017. I find that in accordance with section 88 of the *Act*, the tenants were served with the 10 Day Notice on January 14, 2017.

The landlord testified that the tenants were individually sent copies of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") along with evidentiary packages by way of Registered Mail on January 26, 2017. The tenants confirmed receipt of the packages. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's dispute resolution hearing and evidentiary packages on January 31, 2017.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee from the tenants?

Is the landlord entitled to apply the security deposit against the Monetary Order?

### Background and Evidence

Sworn testimony was provided by the landlord that this tenancy began on January 1, 2017. Rent was \$1,800.00 due on the first of the month. A \$900.00 security deposit continues to be held by the landlord. A copy of the tenancy agreement was also provided to the hearing as part of the landlord's application.

The landlord stated that she is seeking a Monetary Order for \$2,800.00. This amount reflects unpaid rent for January 2017 as well as an unpaid Security Deposit. The landlord explained that on January 9, 2017 she received two returned cheques from the bank. These cheques represented the amounts due for the Security Deposit and rent for January 2017.

| Item                         | Amount     |
|------------------------------|------------|
| Unpaid rent for January 2017 | \$1,800.00 |
| Returned Security Deposit    | 900.00     |
| Return of Filing Fe          | 100.00     |
| Total =                      | \$2,800.00 |

PV did not dispute that these cheques were returned and said that as of January 3, 2017 her bank account was currently frozen and under investigation by the bank as potentially being the victim of fraud.

PV argued that she paid \$500.00 cash to the landlord as recourse for unpaid rent. The landlord denied accepting any money. PV could not provide a date as to when this money was paid and could not produce a receipt that she said she had been issued. The landlord commented that it was her practice not to accept cash.

On February 21, 2017 the landlord received a cheque for \$450.00 from a third-party in PV's name. The landlord said that this was a not-for-profit society who occasionally assists persons with their rent when they cannot pay it.

### Analysis – Order of Possession

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End 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 take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by January 24, 2017. As that

has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis – Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The landlord testified that rent had not been paid for January 2017 and that the security deposit due at the start of the tenancy also remained unpaid. The landlord stated that on January 9, 2017 she received two returned cheques from the bank reflecting the amount in unpaid rent and security deposit. The tenants did not deny that these cheques were returned. PV maintained that her bank account was frozen as the bank was investigating potential fraud issues. No evidence was produced at the hearing corroborating the issues surrounding this alleged fraud.

As the tenants were unable to provide proof that rent was paid or that they were the victims of a bank error, the landlord is entitled to a Monetary Order for unpaid rent for the month of January 2017, less the \$450.00 received on February 21, 2017. Due to this tenancy ending, the landlord cannot receive a Monetary Order for the unpaid security deposit.

As the landlord was successful in their application, they are entitled to recover the \$100.00 filing fee from the tenants pursuant to section 72 of the *Act*.

#### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenants. **If the tenants do not vacate the rental unit within 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.**

**I issue a Monetary Order pursuant to section 67 of the *Act* for \$1,450.00 in favour of the landlord as follows:**

| Item                         | Amount            |
|------------------------------|-------------------|
| Unpaid rent for January 2017 | \$1,800.00        |
| Recovery of Filing Fee       | 100.00            |
| Less Funds Received          | <b>(-450.00)</b>  |
|                              |                   |
| <b>Total Monetary Award</b>  | <b>\$1,450.00</b> |

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: February 27, 2017

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Residential Tenancy Branch