

## **DECISION**

Dispute Codes      FF MNDC MNR MNSD OPR

### Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows

The application from the landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenants did not appear at the hearing. Only the landlord participated in the conference call hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord explained at the outset of the hearing that he had been successful in his application for dispute resolution hearing of February 7, 2017 and that the arbitrator in that matter had issued an Order of Possession. The landlord therefore wished to withdraw his application for an Order of Possession in this hearing and instead pursue only the Monetary Order.

Undisputed testimony was provided that the landlord served the tenants in person on January 10, 2017 with his application for dispute resolution and evidentiary package. Pursuant to sections 88 and 89 of the *Act*, I find that the tenants were served with these documents on January 10, 2017.

The landlord stated that, on February 10, 2017 he again posted a reminder of the application for dispute resolution hearing on the tenant’s door.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and for money owed for damage or loss under the *Act*?

Can the landlord keep all or part of the security deposit to apply against his monetary claim?

Is the landlord entitled to an order for the tenants to pay back the cost of the filing fee?

### Background and Evidence

The landlord explained that this tenancy began on November 1, 2016. Rent was \$800.00 per month and he continues to hold a security deposit of \$400.00.

The landlord stated that the tenants did not appear at the dispute resolution hearing on February 7, 2017 and the arbitrator issued an order of possession for the property. The landlord said that he hopes to recoup unpaid rent for January and February 2017. Specifically, the landlord was seeking a Monetary Order of \$1,600.00 to reflect unpaid rent for two months of unpaid rent. The landlord was also hoping to recover the \$100.00 filing fee from the tenants.

### Analysis – Monetary Order

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their claim for a monetary award.

The landlord explained that the tenants had not paid rent for January or February 2017. On February 7, 2017 the landlord was provided with an Order of Possession by the Residential Tenancy Branch for unpaid rent for January 2017. As the tenants continue to occupy the rental unit, the landlord is entitled to recover the unpaid rent for January and February 2017.

The landlord sought a monetary order of \$1,600.00, which was the amount in unpaid January and February 2017 rent. The landlord has also applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to receive a monetary award for unpaid rent of \$1,600.00.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$400.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenants.

Conclusion

**I am making a Monetary Order of \$1,300.00 in favour of the landlord as follows:**

<b>Item</b>	<b>Amount</b>
Rental Arrears for January 2017	\$800.00
Rental Arrears for February 2017	800.00
Recovery of Filing Fee	100.00
Less Security Deposit	<b>(-400.00)</b>
<b>Total Monetary Award</b>	<b>\$1,300.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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