



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR MNR  
Tenant: CNR OLC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application was received at the Residential Tenancy Branch on January 30, 2017 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities; and
- a monetary order for unpaid rent or utilities.

The Tenant’s Application was dated January 26, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities; and
- an order that the Landlords comply with the *Act*, Regulations or a tenancy agreement.

The Landlords were represented at the hearing by the Landlord J.A.W., who provided affirmed testimony. The Tenant did not attend the hearing. Accordingly, I have not addressed the Tenant’s claims further in this Decision.

On behalf of the Landlords, J.A.W. testified that the Landlord’s Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant in person on February 1, 2017. In the absence of evidence to the contrary, I find the Landlords’ Application package was duly served on the Tenant on February 1, 2017.

J.A.W. was provided the opportunity to present the 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. Are the Landlords entitled to an order of possession for unpaid rent or utilities?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlords submitted a copy of the written tenancy agreement between the parties into evidence. It confirms the parties entered into a month-to-month tenancy that began on September 1, 2016. Rent in the amount of \$850.00 per month is due on or before the first day of each month. The Tenant paid a security deposit of \$225.00 at the beginning of the tenancy, which the Landlords hold.

On behalf of the Landlords, J.A.W. testified that the tenant did not pay rent when due on January 1, 2017. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 22, 2017 (the "10 Day Notice"), which was served on the Tenant in person on the same date. In support of service, the Landlords submitted into evidence a signed and dated Proof of Service form. J.A.W. testified further that the Tenant also did not pay rent when due on February 1, 2017, and that rent in the amount of \$1,700.00 is currently outstanding.

The Landlords also sought to recover unpaid utilities from the Tenant. According to J.A.W., the Landlords were unsure about the amount due for utilities at the beginning of the tenancy. However, in October 2016, the Tenant was told utilities would be \$100.00 per month, which J.A.W. testified was less than half of the charges incurred. J.A.W. noted that utilities are not included in rent.

Analysis

Based on all of the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.*

[Reproduced as written.]

Section 46 of the *Act* permits a landlord to end a tenancy if rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy. On behalf of the Landlords, J.A.W. testified, and I find, that rent was not paid when due on January 1 and February 1, 2017, and that rent in the amount of \$1,700.00 remains outstanding. Accordingly, I find the tenancy has ended and the Landlords are entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

The Landlord also sought to recover unpaid utilities in the amount of \$400.00. Section 46(6) of the *Act* states:

*If*

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*

*the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

[Reproduced as written.]

J.A.W. testified that the Tenant was informed in October 2016 that the monthly payment for utilities would be \$100.00 per month. However, I find there is insufficient evidence before me to conclude there was any agreement with respect to utility charges, or that a written demand for payment was made, as required under section 46(6) of the *Act*. Accordingly, this aspect of the Landlord's claim is dismissed.

On behalf of the Landlords, J.A.W. requested that I apply the security deposit held to any monetary award I make, which I allow. Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$1,550.00, which has been calculated as follows:

| <b>Claim</b>                  | <b>Amount</b>     |
|-------------------------------|-------------------|
| January 2017 rent:            | \$850.00          |
| February 2017 rent:           | \$850.00          |
| Filing fee:                   | \$100.00          |
| <i>LESS</i> security deposit: | (\$250.00)        |
| <b>TOTAL:</b>                 | <b>\$1,550.00</b> |

### Conclusion

The Landlords are granted an order of possession, which will be effective two (2) days after it is served on the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$1,550.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed without leave to reapply.

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**