



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This was the landlord's application under the *Residential Tenancy Act* ("the Act") for an order of possession for unpaid rent, a monetary order for unpaid rent, authorization to retain the security deposit against unpaid rent, and authorization to recover the application filing fee. The landlord also applied for a monetary order for damage or loss under the Act, regulation, or tenancy agreement, but withdrew that request at the hearing as no losses other than unpaid rent were claimed.

The landlord's agent and both tenants attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to the submissions of the other party.

The landlord's agent testified that he served the tenants with the application, notice of hearing, and associated evidence by posting these materials in duplicate on the door of the rental unit.

The landlord amended his application during the hearing to add a claim for outstanding February rent and I accepted the request to amend as per Rule 4.2 of the Rules of Procedure on the basis that the tenants could reasonably anticipate that the amount owing for rent will increase after the date of the application.

### Issues 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 the security deposit in partial satisfaction of the unpaid rent?

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

### Background and Evidence

The parties agreed on the facts set out below.

This tenancy began in August, 2012. Both tenants signed the tenancy agreement, which is in evidence. A security deposit of \$500.00 was provided at the beginning of the tenancy and remains in the landlord's possession. The current monthly rent of \$1,080.00 is due on the first of each month.

The landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 18, 2017 (the "10 Day Notice") on January 18 by posting it on the door of the rental unit. The tenants confirmed that they received the 10 Day Notice on January 18, 2017.

The 10 Day Notice claimed \$4,676.70 owing as of the date of the notice. The tenants did not dispute the notice. They did make made several payments towards their arrears in January and February. There were two receipts in evidence recording a total of \$1,000.00 paid towards arrears in the month of January. The landlord's agent stated that the tenants paid another \$1,900.00 in February (\$1,100.00 on February 3, \$400.00 on February 4, and another \$400 on February 21). Receipts for these payments were not in evidence.

Also in evidence from the landlord was a letter dated October 31, 2016 claiming arrears of \$4,236.00, an account balance sheet for 2014, and a statement dated January 31, 2017 showing a balance owing of \$3,676.70.

There was some confusion as to the specific amount owing based on the documentary evidence and the agent's submissions at the hearing. The agent stated that the amount owing as of January 31, 2107 was the amount showing on the statement of the same date. The agent was not able to explain the larger amount claimed on the 10 Day Notice. The parties agreed that February rent was also owing, and that the payments set out above had been made in January and February. An initial calculation suggested that as of the date of this hearing \$2,856.70 remained outstanding, inclusive of February's rent. Both parties appeared to agree with this figure. However, upon more careful consideration of the documentary evidence and the agent's submissions, this initial calculation appears to be in error.

### Analysis

The tenants acknowledge that they did not file an application to dispute the 10 Day Notice or pay the arrears in full within five days of receipt of the 10 Day Notice.

In accordance with section 46(5) of the Act, the failure of the tenants to dispute the notice or pay the arrears in full within five days led to the end of this tenancy on January 31, 2017, the effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, and as arrears remain owing, I find that the landlord is entitled to a two (2) day order of possession. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

The landlord has also applied for a monetary order for unpaid rent. However, the amount claimed by the landlord on the 10 Day Notice was not clearly supported by the documentary evidence. Although the parties at one point appeared to agree on an amount owing, upon closer consideration that amount is not consistent with the documentary evidence or the agent's submissions. It is the landlord's responsibility to establish the exact amount owing, and the landlord has not done so. Additionally, s. 89 of the Act does not allow an applicant seeking a monetary order to serve application materials by posting them on the door. Accordingly, I dismiss the landlord's application for unpaid rent with leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the \$100.00 of the tenant's security deposit in satisfaction of the \$100.00 application filing fee. The balance of the deposit must be dealt with in accordance with the Act.

### Conclusion

I grant an order of possession to the landlord effective **two (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 grant the landlord the application filing fee of \$100.00 and authorize the landlord to retain that amount from the tenants' security deposit.

The landlord's applications for unpaid rent and for authorization to withhold the balance of the security deposit towards unpaid rent are dismissed with 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*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: February 27, 2017

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Residential Tenancy Branch