



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC MNR OPR MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated December 23, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities;
- an order allowing the Landlord to retain all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenants were represented at the hearing by E.B. Both parties provided a solemn affirmation.

The Landlord testified that his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenants by registered mail on December 30, 2016. In support, the Landlord provided a copy of a Canada Post registered mail receipt bearing that date. The Tenant E.B. confirmed receipt of these documents.

In addition, the Landlord submitted an Amendment to an Application for Dispute Resolution, dated January 19, 2017 (the "Amendment"). According to the Landlord and E.B., the Amendment was served on the Tenants, in person, on January 22, 2017, the day before the hearing. As the Amendment was not served on time in accordance with Rule of Procedure 4.6, I have not considered the Landlord's amended claim in this decision. However, as noted below, the Landlord is granted leave to reapply for the relief sought in the Application and Amendment but not addressed in this hearing.

The Tenants did not submit any documentary evidence.

Both parties were represented at the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the Landlord's Application package. The parties were provided with the opportunity to present 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.

### Preliminary and Procedural Matters

The Landlord sought an order of possession based on a notice to end tenancy for unpaid rent or utilities. No such notice was submitted with the Landlord's documentary evidence. However, in light of the testimony of both parties and the documentary evidence submitted by the Landlord, summarized below, I amend the Landlord's Application to include a request for an order of possession based on a 1 Month Notice to End Tenancy for Cause, dated December 8, 2016 (the "1 Month Notice"). This amendment is made pursuant to section 64 of the *Act*.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the 1 Month Notice?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord submitted with his documentary evidence a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from May 1, 2016 to April 30, 2017. Rent in the amount of \$2,150.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,075.00 and a pet damage deposit of \$1,075.00, which the Landlord holds.

The Landlord provided a copy of the 1 Month Notice with his documentary evidence. The Tenants did not dispute the 1 Month Notice. According to E.B., this was because the Tenants and the Landlord had a verbal agreement the Landlord reneged on, leaving them out of time to dispute it, a claim the Landlord denied.

In any event, the Landlord testified to his belief the Tenants have abandoned the rental unit. On behalf of the Tenants, E.B. confirmed the Tenants have found alternate accommodation and intend to vacate the rental unit on the effective date of the 1 Month Notice. She testified that some of the Tenants' belongings remain in the rental unit, and that she is returning to clean the rental unit but can only do so slowly because she is seven months pregnant.

The Landlord testified rent has not been paid for December 2016 and January 2017, and that \$4,300.00 remains outstanding. In reply, E.B. stated she tried to pay rent for December 2016 but that the e-Transfer was rejected by the Landlord, a claim the Landlord disagreed with. She acknowledged rent for January 2017 has not been paid.

In addition, the Landlord asked to be compensated for municipal user rates from May 31 to September 23, 2016, which are the Tenants' responsibility pursuant to the tenancy agreement. In support, the Landlord provided Statement of User Rates, which has a billing date of September 30, 2016. The Landlord's evidence confirmed he has paid this invoice.

The Landlord also testified the Tenants have not paid BC Hydro charges summarized in an invoice dated November 14, 2016. He stated these charges are the Tenants' responsibility pursuant to the tenancy agreement. The balance payable on the invoice was \$741.16. The Landlord advised he has paid this invoice. The Tenant E.B. did not dispute the amounts claimed for municipal user rates and BC Hydro charges.

### Analysis

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

Section 47 of the *Act* permits a Landlord to end a tenancy for cause for the reasons enumerated therein. In this case, the Landlord served the 1 Month Notice on the Tenants on December 8, 2016, by posting a copy to the door of the Tenants' rental unit. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. Accordingly, I find the Tenants are deemed to have received the 1 Month Notice on December 11, 2016.

When a tenant receives a notice to end tenancy for cause, the tenant has ten days to dispute the notice by filing an application for dispute resolution. Failure to do so results in the conclusive presumption that the tenant has accepted the tenancy will end on the effective date of the notice. In this case, E.B. acknowledged receipt of the 1 Month

Notice, testified that the Tenants have secured alternate accommodation, and will be vacating the rental unit by January 31, 2017, which is the effective date indicated.

As the Tenants did not dispute the 1 Month Notice, I find the Landlord is entitled to an order of possession, which will be effective January 31, 2017, at 1:00 p.m.

The Landlord also sought to recover unpaid rent for December 2016 and January 2017. The amount outstanding is \$4,300.00. In light of the testimony of the Landlord and E.B., who acknowledged rent has not been received by the Landlord, I find rent has not been paid for this period. Accordingly, the Landlord is entitled to a monetary order for unpaid rent in the amount of \$4,300.00 for rent during this period.

In addition, the Landlord asked to be compensated for municipal user rates and BC Hydro charges totalling \$1,065.28, and provided documentary evidence in support. The Tenants did not dispute the amounts claimed by the Landlord. Accordingly, I find the Landlord is entitled to a monetary award in the amount of \$1,065.28 for unpaid municipal user rates and BC Hydro charges.

Having been successful, I also find the Landlord is entitled to an order granting recovery of the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$5,465.28, which has been calculated as follows:

<b>Item</b>	<b>Amount</b>
December 2016 rent:	\$2,150.00
January 2017 rent:	\$2,150.00
Municipal user rates (May 31-September 23, 2016):	\$323.60
BC Hydro charges (September 10-November 9, 2016):	\$741.68
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$5,465.28</b>

The remaining aspects of the Landlord's Application and Amendment are dismissed with leave to reapply. That is, the Landlord remains at liberty to reapply for the claims included in the Application and Amendment but not addressed in this Decision, which may include: municipal user rates and BC Hydro charges not addressed above, lost rental income, cleaning and repairs to the rental unit, and other losses.

Conclusion

The Landlord is granted an order of possession, which is effective January 31, 2017, at 1:00 p.m. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$5,465.28. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 2, 2017

---

Residential Tenancy Branch