



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This review hearing was convened in response to a review decision rendered by the *Residential Tenancy Act* (the "Act") on December 19, 2016 to reconsider the Monetary Order issued to the landlords by way of Direct Request on December 2, 2016. The review consideration decision of December 19, 2016 did not consider the Order of Possession issued on December 2, 2016 by way of Direct Request and noted that this Order of Possession stands and remains in full force and effect.

Only the landlords participated in the conference call hearing. They were all given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

In the adjournment decision granted on January 24, 2017 it is noted, **Notices of the time and date of the reconvened review hearing are included with this Interim Decision for the Tenant to serve to the Landlord within 3 days of receipt of this Decision. The Tenant must also serve a copy of the Review Consideration Decision of December 19, 2016 to the Landlord.** The landlords acknowledged receipt of the time and date of the hearing and were prepared to proceed with the matter.

In the original decision of December 2, 2016, the adjudicator issued a Monetary Order of \$2,971.60, the amount identified as owing in the landlord's application for this tenancy. Since then, the landlord's representatives advised that an additional \$3,640.00 had become owing. At the commencement of the hearing, they requested this additional monetary award, totalling \$6,611.60, to reflect the total amount currently owing from this tenancy.

In accordance with the Residential Tenancy Branch's Rule of Procedure 4.2, I have allowed the landlord's request for this additional monetary award as the amount of rent owing has increased since the original application was submitted.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for Unpaid rent?

### Background and Evidence

The landlords provided oral testimony along with a copy of the tenancy agreement that this tenancy began on February 1, 2015. Rent was for the unit was \$910.00 per month and a security deposit of \$447.50 continues to be held by the landlords.

On December 2, 2016 an Order of Possession, as well as a Monetary Order for \$2,971.60 was issued to the landlords by way of Direct Request for unpaid rent. In the December 2, 2016 decision, the Monetary Order was described in the following terms:

*...I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$2,971.60, (\$910.00 + \$910.00 + \$.910.00 + \$910.00 – 668.40) for unpaid rent owing for May 2016, July 2016, September 2016 and August 2016, as of November 15, 2016*

On December 19, 2016 the tenants were granted a new hearing solely to address the issue of unpaid rent. The arbitrator did not consider the portion of the tenants' application for a review concerning the order of possession issued on December 2, 2016. The arbitrator ruled that this order remained in effect.

On January 24, 2017 the landlords were granted an adjournment of the review hearing.

During the course of the review hearing on February 21, 2017, the landlords stated that the tenants continued to occupy the rental unit. The landlords were seeking a Monetary Order for unpaid rent for the time that the tenants had overheld in the rental unit.

At the February 21, 2017 hearing, the landlords sought the confirmation of the original \$2,971.60 Monetary Order, plus an additional \$3,640.00 for unpaid rent for the months of October through December 2016, plus the tenants' overholding in the rental unit for the month of February 2017. The landlords stated that the tenants made a payment of \$910.00 for January 2017, but this was accepted for use and occupancy only.

Item	Amount
Rental Arrears for October 2016	\$910.00
Rental Arrears for November 2016	910.00
Rental Arrears for December 2016	910.00
Rental Arrears for February 2017	910.00

<b>Total Monetary Award</b>	<b>\$3,640.00</b>
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### 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 landlords to prove their entitlement to their claim for a monetary award.

Section 57(3) of the *Act* notes;

**57(3)** A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The landlords explained that the tenants continue to occupy the rental unit despite the issuance of the Order of Possession issued on December 2, 2016. Pursuant to section 57(3) of the *Act* the landlords are therefore entitled to collect rent for the period that the tenants have overheld in the rental unit.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' \$447.50 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

In accordance with the powers granted to me pursuant to section 82(3) of the *Act*, I vary the original Monetary Order of \$2,971.60 and replace it with a new Monetary Order of \$6,164.10. I further order that any payment secured by the landlord to implement the previous Monetary Order of December 2, 2016 is to be set against the new Monetary Order of \$6,164.10, I am attaching to this decision.

Conclusion

The Order of Possession issued on December 2, 2016 remains valid and in effect.

**I set aside the previous Monetary Order of December 2, 2016, and replace it with the attached Monetary Order of \$6,164.10 in favour of the landlord as follows:**

Item	Amount
Rental Arrears for Unpaid Rent for May, July, August and September 2016 ( $\$910.00 + \$910.00 + \$910.00 + \$910.00 - 668.40 = \$2,971.60$ )	\$2,971.60
Rental Arrears for October 2016	910.00
Rental Arrears for November 2016	910.00
Rental Arrears and Overholding for December 2016	910.00
Tenants' Overholding for February 2017	910.00
Less Security Deposit	<b>(-447.50)</b>
<b>Total Monetary Award</b>	<b>\$6,164.10</b>

The landlords are 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.

I further order that any payment secured by the landlord to implement the previous Monetary Order of December 2, 2016 is to be set against the new Monetary Order of \$6,164.10.

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: March 1, 2017

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Residential Tenancy Branch