



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR OPR

### Introduction

I was designated to hear this matter under section 58 of the *Residential Tenancy Act* (the *Act*). This hearing dealt with the landlords' application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities.

While the landlords attended the hearing by way of a conference call, the tenants did not. The landlords were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was served in person by their agent, HM on January 10, 2017. I find that in accordance with sections 88 and 90 of the *Act* the 10 Day Notice was served to the tenants on January 10, 2017.

On January 23, 2017 the landlords attempted to proceed for dispute resolution by way of Direct Request. A decision rendered on January 30, 2017 rejected this request as the landlords had served two-10 Day Notices and it was difficult for the adjudicator to determine specifically which 10 Day notice had been served on the tenant.

The landlords testified that the tenants were individually served with the Landlords' Application for Dispute Resolution hearing package ("dispute resolution hearing package"), evidentiary package and monetary order by Registered Mail on February 8, 2017. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were served with the landlords' dispute resolution hearing package and monetary order on February 13, 2017.

The landlords stated they wished to amend the monetary order from \$1,250.00 to \$2,950.00 in reflection of unpaid rent for February and March 2017. Pursuant to section

64(3)(c), I amend the landlords monetary order to reflect the new amount of outstanding rent of \$2,950.00.

#### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

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

#### Background and Evidence

The landlords gave evidence that the tenancy in question began on May 15, 2012. This was a 1 year tenancy that continued as a month to month tenancy following the expiration of a year. Rent was set at \$850.00 per month and a security deposit of \$425.00 was collected at the outset of the tenancy. This deposit continues to be held by the landlords.

The landlords have applied for an Order of Possession and a Monetary Order for partial payment of rent for the month of December 2016, as well as unpaid rent for January, February and March 2017. The landlords are seeking a Money Order of \$2,950.00 to recover monies owed from non-payment of rent for these months.

<b>Item</b>	<b>Amount</b>
Partial rent for December 2016	\$400.00
Unpaid rent for January 2017	850.00
Unpaid rent for February 2017	850.00
Unpaid rent for March 2017	850.00
Total =	2,950.00

#### Analysis – Order of Possession

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by January 20, 2017. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenants

do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

### Analysis – Monetary Order

I accept the uncontested evidence offered by the landlords that the tenants have only paid partial rent for December 2016, and that rent has gone unpaid in its entirety for January, February and March 2017.

Section 7(1) of the *Act* stipulates that, a *tenant* [who] *does not comply with this Act, the regulations or their tenancy agreement must compensate the landlord for damage or loss that results.*

Section 57(3) of the *Act* allows a landlord to obtain compensation for losses incurred as a result of a tenant's overholding of a rental unit after the effective date of a notice to end tenancy. In this case, the landlords explained that the tenants continue to occupy the rental unit and a large number of repairs will be required before the unit is again fit to be occupied. Specifically, the landlords cited that a door will need to be replaced after it was kicked in. Furthermore, the landlords testified that their agent spoke with the tenants on March 1, 2017 and they indicated they would be remaining in the premises until April 1, 2017.

The landlords will be granted compensation reflected in the Monetary Order, pursuant to section 57(3) of the *Act* for the time that the tenants overheld in the suite plus the remainder of March 2017, as I find unlikely that the landlords will be able to locate a new tenant during the remainder of this month.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's \$425.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

**I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenants.** Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

**I am making a Monetary Order of \$2,525.00 in favour of the landlords as follows:**

Item	Amount
Partial rent for December 2016	\$400.00
Unpaid rent for January 2017	850.00
Unpaid rent for February 2017	850.00
Unpaid rent for March 2017	850.00
Less Security Deposit	425.00
Total =	2,525.00

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.

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 2, 2017

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Residential Tenancy Branch