



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNR MNSD OPR

### Introduction

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

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities;
- an application to keep all or part of the security deposit pursuant to section 72 of the *Act*, and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Only agents for the landlord attended the hearing. The agents ("landlord") were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

On January 18, 2017 the landlord issued a 10 Day Notice for Unpaid Rent or Utilities ("10 Day Notice") by way of email. Documents were produced at the hearing demonstrating that on January 19, 2017 the tenants replied to this email acknowledging receipt of the notice. While not a recognized form of service under the *Act*, the landlord testified that the tenants had vacated the property and they no longer required an Order of Possession.

On February 9, 2017 the landlord sent both tenants a copy of the Landlords Application for Dispute Resolution ("Landlords` Application"). Copies of the Canada Post tracking numbers and receipts were provided to the hearing. Pursuant to sections 89 and 90 of the *Act* the tenants are deemed to have been served with the Landlords` Application on February 14, 2017.

The landlord stated that they were withdrawing their application for an Order of Possession as the tenants vacated the rental unit "at the end of February."

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee from the tenants?

Is the landlord entitled to apply the security deposit against the Monetary Order?

### Background and Evidence

Testimony and a copy of the residential tenancy agreement were produced at the hearing demonstrating that this tenancy began on February 15, 2014. Rent was \$1,950.00 due on the 1<sup>st</sup> of the month, rising to \$2,000.00 in March 2016. A security deposit of \$975.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord stated that he is seeking an Order of Possession and a Monetary Order for \$4,000.00 for unpaid rent for the months of January and February 2017. The landlord is also looking to retain the security deposit to apply against the monetary claim and to recover the filing fee associated with this application. Specifically the landlord is seeking:

<b>Item</b>	<b>Amount</b>
Unpaid rent for January 2017	\$2,000.00
Unpaid rent for February 2017	2,000.00
Return of Filing Fee	100.00
Less Security Deposit	<b>(-975.00)</b>
Total =	\$3,125.00

The landlord explained that the tenants vacated the rental unit towards the end of February without notice. The landlord was only made aware tenants' abandonment of the rental unit after the landlord received the keys for the rental unit in the mail on February 22, 2017. No forwarding address was provided to the landlord.

### 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 landlord to prove his entitlement to his claim for a monetary award.

The landlord sought a monetary order of \$4,000.00, which was the amount in unpaid rent for January and February 2017. The landlord has also applied pursuant to section 72 of the *Act* to keep all of the security deposit as a relief against monies owed.

The landlord provided undisputed testimony that rent was not paid for January and February 2017. The landlord also stated that the tenants had abandoned the rental unit without providing

a forwarding address. I am satisfied that the landlord has proved the existence of damage and loss stemming directly from a violation of the *Act*.

Since the landlord was successful in his application he may recover the \$100.00 filing from the tenants for this application. Using the offsetting provisions contained in section 72 of the *Act* the landlord may retain the security deposit against monies owed.

Pursuant to sections 67 and 72 of the *Act*, **I find that the landlord is entitled to receive a monetary order for unpaid rent for \$3,125.00.** 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.

### Conclusion

**I am making a Monetary Order of \$3,125.00 in favour of the landlord as follows:**

Item	Amount
Unpaid rent for January 2017	\$2,000.00
Unpaid rent for February 2017	2,000.00
Return of Filing Fee	100.00
Less Security Deposit	<b>(-975.00)</b>
Total =	\$3,125.00

The landlord is 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 8, 2017

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Residential Tenancy Branch