



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPM, MNR, MNDC & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$6075 for unpaid rent and loss or rent
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on October 21, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on January 24, 2017. With respect to each of the applicant's claims I find as follows:

The monetary order worksheet sought an order to keep the security deposit thus reducing the monetary order. I ordered that the Application for Dispute Resolution be amended to include a claim to keep the security deposit.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlords are entitled to an Order for Possession?
- b. Whether the landlords are entitled to A Monetary Order and if so how much?
- c. Whether the landlords are entitled to retain the security deposit?

- d. Whether the landlords are entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on August 14, 2016 and end on August 13, 2017. The rent is \$3200 per month payable on the first day of each month. The tenant paid a security deposit of \$1600 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of September (\$700 is owed), October (\$3200 is owed) and November (\$3200 is owed) and the sum of \$7100 remains owing. The tenant(s) vacated the rental unit on November 1, 2016.

### Analysis - Order of Possession:

It is not necessary to consider the landlord's application for an Order of Possession as the Tenants have vacated the rental unit and the landlord has regained possession.

### Analysis - Monetary Order and Cost of Filing fee:

With respect to each of the landlords' claims I find as follows:

- a. The rent cheque for September 2016 in the sum of \$3200 was returned NSF. The tenants made to cash payments totaling \$2500. However, I determined Tenants owed the landlords the sum of \$700 for September 2016.
- b. The rent cheque for October 2016 was returned NSF. I determined the Tenants owed the Landlords \$3200 for non-payment of rent for October 2016.
- c. I determined the Tenants owed the Landlords \$527.15 for the BC Hydro and Fortis BC bills for September and October 2016.
- d. I determined the Tenants owed the landlord \$48 for an NSF fee charged by the bank as a result of the there being insufficient funds for the rent for September. The landlords presented evidence as to this charge.
- e. I determined the Tenants owed the Landlords \$3200 for loss of rent for November. The tenants signed a fixed term tenancy agreement and they are responsible to pay the rent during the unexpired term subject to the landlord's obligation to mitigate their loss. I determined the landlord sufficiently attempted to re-rent the premises but have been unsuccessful. I do not accept the submission of the Tenants that they are not responsible to pay the rent for November as they complied with the 10 day Notice to End Tenancy. The parties agreed to a payment plan. However,

the Tenants failed to make any payments under that payment plan. The agreement specifically provided that if the Tenants failed to honor their commitment under the payment plan, the landlords retained the full right to obtain his claim through the RTA process.

In summary I determined the landlords have established a claim at the Tenants in the sum of \$7675.15. I granted the landlord a monetary order in the sum of \$7675.15 plus the sum of \$100 in respect of the filing fee for a total of \$7775.15.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1600. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$6175.15.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$1600. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$6175.15.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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 20, 2017

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Residential Tenancy Branch