



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR OPR

### Introduction

This participatory hearing was convened after the issuance of a February 22, 2017 Interim Decision of Adjudicator J. Doyon. Adjudicator Doyon determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlords. She reconvened the landlords' application for the following to a participatory hearing:

This hearing was convened in response to applications by the landlords pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

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

Only the landlord, PK, participated in the conference call hearing. PK was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice was handed to the tenant on February 3, 2017. Pursuant to sections 88 and 90 of the *Act*, I find the tenants were served with the 10 Day notice on February 3, 2017.

On February 23, 2017, the landlord sent via Registered Mail a copy of the Landlords' application for Dispute Resolution Package and Monetary Order. A copy of the Canada Post tracking number was provided to the hearing. Pursuant to sections 89 and 90 of the *Act*, the tenants are deemed to have been served with the documents on February 28, 2017.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order?

### Background and Evidence

On February 22, 2017 an adjudicator with the *Residential Tenancy Branch* ruled that the landlords could not proceed by Direct Request because, “the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*.” It was therefore the adjudicator’s decision that this matter be reconvened for a hearing.

At the outset of the hearing landlord, PK explained that the landlords no longer required an Order of Possession as the tenants had vacated the rental unit on March 3, 2017. He stated that they landlords were still interested in pursuing a Monetary Order for \$980.00.

Undisputed testimony was provided at the hearing by, PK stating that the tenancy in question began on September 1, 2016. Rent was \$950.00 per month and a security deposit of \$480.00 continues to be held by the landlord. As the tenants were struggling to pay rent, the landlords agreed reduce rent for January and February 2017 to \$800.00. The tenants paid \$620.00 in rent for January and rent for February 2017 remains unpaid.

Item	
Unpaid partial rent for January 2017	\$180.00
Unpaid rent for February 2017	800.00
<b>Total =</b>	980.00

### Analysis – Monetary Order

As the tenants have vacated the rental unit on March 3, 2017, I must solely turn my attention to the issue of the Monetary Order of \$980.00 for unpaid rent requested by the landlords.

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.

Landlord PK provided undisputed testimony that the tenants did not pay rent for the time period requested. I found PK to be a credible witness and will therefore grant him the Monetary Order that he requested.

The landlords have not applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlords to retain the security deposit of \$480.00 to be put against the Monetary Order.

### Conclusion

**I am making a Monetary Order of \$500.00 in favour of the landlords as follows:**

<b>Item</b>	<b>Amount</b>
Unpaid partial rent for January 2017	\$180.00
Unpaid rent for February 2017	800.00
Less Security Deposit	(-480.00)
<b>Total =</b>	500.00

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 22, 2017

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**Residential Tenancy Branch**