



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR

### Introduction

A hearing was convened to deal with the landlords' application for an order of possession and monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 9, 2017 (the "10 Day Notice"). The application is brought under the *Residential Tenancy Act* (the "Act").

One of the landlords appeared at the hearing with an agent who spoke on his behalf and who was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

As the tenant did not attend the hearing, service of the landlords' application and notice of hearing was considered. The landlord's agent testified that the tenant was served with these materials, along with an Amendment form, by registered mail sent on March 9. Copies of the registered mail receipts were in evidence. The materials were also left at the tenant's door. I accept that the tenant was served in accordance with the Act on March 14, five days after the registered mail was sent.

The landlord amended his application during the hearing and by way of an Amendment form to add a claim for outstanding March rent and I accept the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing with respect to matters that can reasonably be anticipated, such this. The tenant was also served with the Amendment by registered mail as set out above.

### Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the application filing fee?

### Background and Evidence

According to the written tenancy agreement in evidence and the agent's affirmed and undisputed evidence, this tenancy began on December 15, 2014 as a month to month tenancy with rent of \$600.00 payable on the 15th of each month. At some point rent became payable on the 1st of each month. Another tenant also signed the tenancy agreement but she has since moved out and has not been named as a party to this dispute. A security deposit of \$300.00 was paid at the beginning of the tenancy and the landlords continue to hold that amount.

The agent stated that the tenant did not pay rent for November of 2016 and has not paid rent since then. The landlord served the tenant with the 10 Day Notice on February 9, 2017. A Proof of Service document signed by a witness was included in the landlords' evidence.

The tenant appears to have recently vacated the rental unit but the landlord is not certain of this. The tenant has not filed an application to dispute the 10 Day Notice.

### Analysis

The landlords provided undisputed evidence at this hearing, as the tenant did not attend. Based on the undisputed testimony and the Proof of Service document in evidence, I find that the tenant was served with the 10 Day Notice on February 12, 2017, three days after it was posted on the rental unit door, as per s. 90(d) of the Act. I also find that the tenant has not paid rent for November, 2016 – March, 2017, inclusive.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice or pay the amount outstanding in full within five days of receipt of the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Here, the tenant did not make an application pursuant to section 46(4) or pay the arrears within five days of receipt of the 10 Day Notice. In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on February 22, 2017, the effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7(1) and 67 establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$600.00 for November – March, inclusive. Therefore, I find that they are entitled to \$3,000.00 in rental arrears for the above period.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee.

The landlords continue to hold the tenant's security deposit of \$300.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of s. 72 of the Act, I authorize the landlords to retain the tenant's security deposit of \$300.00 in partial satisfaction of the monetary claim.

The landlords have also claimed for the cost of serving the tenant by registered mail. I decline to award those amounts.

### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlords in the following terms, which allows them to obtain a monetary award for unpaid rent and loss of rental income and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Rent November – March, inclusive	\$3,000.00
Filing Fee	\$100.00
Less Security Deposit	-\$300.00
<b>Total Monetary Order</b>	<b>\$2,800.00</b>

I issue a monetary order in the landlord's favour in the amount of \$2,800.00 against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 30, 2017

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Residential Tenancy Branch

