



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, ERP

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- recovery of the filing fees for this application from the tenants.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an Order that the landlord make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by counsel who spoke on her behalf (the "landlord"). The tenant EG confirmed he represented both tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the tenants' application for dispute resolution, the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the respective applications and their respective evidence.

During the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have failed to pay the March rent amount and that the total arrears including rent owing and unpaid utilities as of the date of the hearing is \$7,955.64. I find that it was reasonably foreseeable that the amount of rent owing would increase since the date the application was made. Therefore, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$6,455.64 to \$7,955.64.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Should the landlord be ordered to make emergency repairs?

#### Background and Evidence

This month to month tenancy began in August, 2015. The tenants are responsible for paying monthly rent in the amount of \$1,500.00 and utilities. A security deposit of \$750.00 was paid at the start of the tenancy but is no longer held by the landlord.

The landlord testified that the tenant has failed to pay the rent for January, February, and March, 2017. The tenant confirmed that he has not paid the rent for those months. The tenant testified that he paid \$750.00 on January 3, 2017 but that amount was used to pay a portion of the utility charges that were outstanding at that time.

The parties testified that the tenant has paid \$2,650.00 for utilities during the tenancy. The landlord said that \$3,455.64 remains outstanding for utility charges. The landlord testified that the tenant was informed of the utility charges in writing in January. The parties testified that since the payment of January 3, 2017 the tenant has made no other payments against the rent or utilities.

The tenant testified that the rental unit was uninhabitable and required repairs but did not provide specific evidence as to what repairs are required in the rental unit.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on or about February 14, 2017, and applied for dispute resolution on February 20, 2017.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord testified that there is a rent arrear of \$4,500.00. The tenant confirmed that he has not paid rent since January 3, 2017. The tenant testified that he made a payment of \$750.00 on that date which should have been applied against rent. The tenant confirmed that he did not pay the full amount of rent owing and has failed to make any payment since that date. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the evidence of the landlord that there is a rental arrear of \$4,500.00. I accept the evidence of the parties that the tenants were responsible for paying the utilities. I accept the landlord's evidence that the total amount of utilities owing is \$3,455.64. Pursuant to section 46(6) and 67 of the *Act* I issue a monetary award in the landlord's favour for \$7,955.64 that includes the unpaid rent owing of \$4,500.00 for January to March, 2017 and the utilities owing of \$3,455.64.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I dismiss the tenants' application.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms:

Item	Amount
Rental Arrears for January 2017	\$1,500.00
Rental Arrears for February 2017	\$1,500.00
Rental Arrears for March 2017	\$1,500.00
Utilities Arrears for Tenancy	\$3,455.64
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$8,055.64</b>

The tenants must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 17, 2017

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Residential Tenancy Branch