



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the *Act*") for: an Order of Possession for Unpaid Rent and Utilities pursuant to section 55; a monetary order for unpaid rent and other loss pursuant to section 67; an order to be allowed to keep all or part of the security deposit pursuant to section 38; to recover the filing fee from the tenants for the cost of this application pursuant to section 72.

The tenants did not attend this hearing, although the teleconference hearing continued until 11:19 a.m. The landlord's agent ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions on behalf of the landlord's application.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to the tenant on February 1, 2017 by posting it on the tenants' door. The landlord submitted a proof of service document providing the details of the service. Based on the undisputed evidence of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on February 4, 2017 (3 days after its posting). The landlord testified and provided documentary evidence to prove that each of tenants were served with the Dispute Resolution hearing package ("ADR") by registered mail on March 3, 2017. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were both deemed served with the 10 Day Notice on March 8, 2017 (5 days after its mailing).

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?  
Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that the residential tenancy agreement began on October 15, 2016 as a one year fixed term. The landlord submitted a copy of the residential tenancy agreement with a rental amount of \$1300.00. The landlord testified that he did not receive a security or pet damage deposit from the tenants as of the date of this hearing.

The landlord testified that, after the tenants moved in, they paid rent for November 2016 but did not pay their security or pet damage deposit to the landlord. The landlord testified that the tenants paid December 2016 rent late but paid in full. The landlord testified that the tenants paid no rent for January 2017, February 2017 and March 2017. The landlord testified that the tenants regularly borrowed money from the landlord after their payday.

With respect to the unpaid security and pet damage deposit, the landlord testified that, prior to December 1, 2016 the tenants provided \$100.00 towards their security deposit. The landlord testified that the tenants provided \$1000.00 on March 3, 2017. He testified that he 'applied this amount towards the tenants' outstanding security deposit'.

The landlord testified that the tenants were also required to pay a portion of the utility bills at the rental unit. He testified that the tenants have not paid any amount towards utilities since the start of their tenancy. He testified that the current utility balances exceed \$555.00. The landlord submitted some text correspondence with the tenants regarding utilities. That correspondence appears to reflect a disagreement with the tenants regarding payment of utilities. The landlord did not submit copies of any utility bills.

The landlord has applied for an Order of Possession for unpaid rent from January 2017 to March 2016. The landlord testified that the tenant did not pay rent of \$1300.00 due on January 1, 2017 as indicated in the 10 Day Notice to End Tenancy. The landlord testified that, when the tenants paid him \$1000.00, he advised them that it would not be considered a rental payment and that it would not mean their tenancy could continue.

The landlord sought to recover the unpaid rent totalling \$3900.00 and utilities totalling \$555.00 as well as the outstanding unpaid security and pet damage deposit amounts. At the hearing, the landlord withdrew his request for security and pet damage deposit amounts. The landlord applied for a monetary award as follows:

|                             |                  |
|-----------------------------|------------------|
| Rental Arrears for 3 months | \$3900.00        |
| Unpaid Utilities            | 555.00           |
| Less Security Deposit       | -1100.00         |
| <b>Total Monetary Award</b> | <b>\$3355.00</b> |

### Analysis

I accept the undisputed sworn testimony of the landlord's agent that the tenants have not paid rent for January, February or March 2017. I accept the documentary evidence submitted by the landlord to support his testimony. Based on all of the evidence before me, I find that the tenants failed to pay the January 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. I note that the tenant provided an amount of \$1000.00 to the landlord on approximately March 3, 2017 according to the landlord agent's testimony. However, this amount was still paid after the 5 days to pay outstanding rent. Further, the landlord provided undisputed testimony that the tenants were advised the \$1000.00 payment would not reinstate their tenancy.

The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 10, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is also entitled to receive a monetary award for unpaid rent in the amount of \$3900.00 for 3 months (January, February and March 2017). I find that any amounts that the landlord described as lent to the tenants are not within my purview to issue a monetary order; they are outside of the scope of the *Residential Tenancy Act*. I find that the documentary evidence submitted by the landlord does not sufficiently prove that the tenants agreed to be responsible and are responsible for a portion of the utility bills. As there is a lack of compelling evidence regarding the utility bills, I dismiss this portion of the landlord's claim.

The landlord testified that he continues to hold a security deposit amount of \$1100.00 plus any interest from the outset of the tenancy to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award. [There is no interest payable for this period.]

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

|  |                  |
|--|------------------|
| Rental Arrears for January, February, March 2017 | \$3900.00        |
| Less Security Deposit                            | -1100.00         |
| <b>Total Monetary Award to Landlord</b>          | <b>\$2800.00</b> |

The landlord is provided with formal Orders in the above terms. Should the tenant(s) 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: April 3, 2017

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Residential Tenancy Branch