



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The two tenants, male and female, did not attend this hearing, which lasted approximately 15 minutes. One of two landlords, landlord BS, and his English language translator PS (collectively "landlord") 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 confirmed that he had authority to represent his brother, "landlord AS," the other landlord named in this application, as an agent at this hearing (collectively "landlords"). The landlord confirmed that his translator, who is also his nephew, had authority to assist him at this hearing.

The landlord testified that the two tenants were each served separately with a copy of the landlords' application for dispute resolution hearing package on March 21, 2017, both by way of registered mail to the rental unit address where they are still residing. The landlord provided two Canada Post receipts and tracking numbers with his application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' application on March 26, 2017, five days after their registered mailings.

The landlord testified that the male tenant was personally served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2017 ("10 Day Notice") on the same date. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the landlords' 10 Day Notice on March 2, 2017.

Preliminary Issue - Amendment to Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to increase the monetary claim to include April 2017 rent of \$1,700.00. Since the landlords filed their application on March 20, 2017, the April 2017 rent was not yet due. The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlords' claim for increased rent, despite the fact that they did not attend this hearing.

### 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 filing fee for this application?

### Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on November 1, 2016. Monthly rent in the amount of \$1,700.00 is payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants and the landlords continue to retain this deposit. No written tenancy agreement was signed by the parties but a verbal tenancy agreement was reached. The tenants continue to reside in the rental unit.

The landlords seek an order of possession for unpaid rent. The landlords issued the 10 Day Notice indicating that rent of \$2,550.00 was due on March 1, 2017. The \$2,550.00 includes \$1,700.00 for March 2017 rent and \$850.00 for February 2017 rent. The landlord maintained that the tenants only made a partial rent payment of \$1,600.00 for January 2017 rent, but he was not seeking the outstanding \$100.00 from the tenants. The landlord said that the tenants only paid \$850.00 towards February 2017 rent on February 6 and 25, 2017, leaving a balance of \$850.00, and they only paid \$450.00 towards March 2017 rent on March 2, 2017, leaving a balance of \$1,250.00. The landlords provided copies of handwritten rent receipts issued to the tenants for all of the above partial rent payments made by them. The landlord claimed that the tenants did not pay any rent for April 2017, leaving a balance of \$1,700.00. The landlords provided

a handwritten rent ledger, showing the above outstanding rent amounts owed by the tenants from February to April 2017, inclusive.

The landlords seek a monetary order of \$3,800.00 for unpaid rent from February to April 2017 inclusive, as well as recovery of the \$100.00 filing fee.

### Analysis

The landlords provided undisputed evidence, as the tenants did not attend this hearing, nor did they submit any written evidence for the hearing. The tenants failed to pay the full rent due on March 1, 2017, within five days of receiving the 10 Day Notice. The tenants have not made an 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 failure of the tenants to take either of the above actions within five days led to the end of this tenancy on March 12, 2017, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by March 12, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlords provided undisputed evidence that the tenants failed to pay rent of \$3,800.00 from February to April 2017, inclusive. Therefore, I find that the landlords are entitled to \$3,800.00 in unpaid rent from the tenants.

The landlords continue to hold the tenants' security deposit of \$850.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlords did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' entire security deposit of \$850.00 in partial satisfaction of the monetary award.

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

### Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenant(s) or anyone 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 landlords' favour in the amount of \$3,050.00 against the tenants. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

I order the landlords to retain the tenants' entire security deposit of \$850.00 in partial satisfaction of the monetary award.

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 21, 2017

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Residential Tenancy Branch