



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MND MNR MNSD OPR

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord provided undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was hand delivered to the tenants on March 25, 2017. A copy of the Proof of Service document was submitted at the hearing as part of the landlord's application and evidentiary package. Pursuant to sections 88 & 90 of the *Act*, the tenants are found to have been served with the 10 Day Notice on March 25, 2017.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on July 4, 2017. Tracking numbers and copies of the receipts for each package were provided at the hearing. In addition the landlord explained that the tenants were each handed a copy of the Landlord's Application for Dispute Resolution on June 27, 2017. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed to have been served with these documents on July 9, 2017.

At the outset of the hearing the landlord stated that he wished to withdraw the monetary order related to damage to the unit, site or property and only sought a monetary order for unpaid rent. As the tenants would not be prejudiced by this action, I amend the landlord's application for a Monetary Order pursuant to section 64(3)(c) of the *Act* to reflect only unpaid rent.

Issue(s) to be Decided

Can the landlord retain the tenants' security deposit?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Can the landlord recover the filing fee associated with the application?

Background and Evidence

Undisputed testimony was provided to the hearing by the landlord that this tenancy began in September 2011. The landlord stated that rent was \$1,800.00 and no security deposit was collected. During the hearing the landlord explained that the tenants had originally intended to purchase the property from the landlord; however, he said that in 2014 they changed their mind and the parties agreed that the property would not be purchased by the tenants and their relationship would be strictly one of landlord and tenant.

The landlord said that he did not collect full rent for numerous years for many reasons. In particular, the landlord detailed that he was busy with some personal issues that consumed much of his time and energy between 2013 and 2015. He continued by noting that the female tenant had been unwell and was back and forth between the hospital for some time. In addition, he said that the local church had assisted the tenants in paying the rent from March 2015 to July 2015. The landlord explained that the male tenant was now steadily employed and the landlord sought to recover the unpaid rent that was due. The landlord acknowledged that some rent had been paid over the years; however, he said that it was never consistent and large portions of rent remained unpaid.

Specifically, the landlord sought a Monetary Order of \$12,220.00 in unpaid rent for the following time periods;

Item	Amount
Unpaid rent for 2011	\$500.00
Unpaid rent for 2013	2,500.00
Unpaid rent for 2014	100.00
Unpaid rent for 2015	4,950.00
Unpaid rent for 2016	3,570.00
Unpaid rent for 2017	600.00
<b>Total =</b>	<b>\$12,220.00</b>

### Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. 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 tenants' failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by April 4, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 landlord to prove entitlement to a claim for a monetary award.

The landlord explained that the tenants have not paid rent in full since 2011. During the course of the hearing, the landlord noted that prior to 2014 the property was subject to a possible sale between the parties. I therefore find that, any rent due prior to 2014 falls outside the scope of a landlord/tenant relationship, as the parties were trying to reach an agreement for sale. With this in mind, I turn my attention to the unpaid rent for 2014, 2015, 2016 and 2017. After having reviewed the ledgers produced at the hearing by the landlord and based on his undisputed testimony, I find that the tenants have failed to pay \$9,220.00 in rent for the time periods listed above. The tenants failed to attend the hearing, and no evidence was submitted by the tenants explaining why rent remained unpaid. I find that the landlord has suffered a financial loss under this tenancy as a result of the unpaid rent, and pursuant to section 67 of the *Act* I find that the landlord is entitled to receive a monetary award for unpaid rent and utilities of \$9,220.00.

As the landlord was partially successful in his application, he may recover the \$100.00 filing fee from the tenants.

Since no security deposit was collected, the landlord has no standing to retain the tenants' security deposit.

Conclusion

The landlord's application to retain the tenants' security deposit is dismissed.

I make a Monetary Order of \$9,320.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for 2014	100.00
Unpaid rent for 2015	4,950.00
Unpaid rent for 2016	3,570.00
Unpaid rent for 2017	600.00
Return of Filing Fee	100.00
Total =	\$9,320.00

The landlord is 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.

I grant an Order of Possession to the landlord effective 2 days after service of this Order on the tenants. Should the tenants fail to comply with this Order, this Order may be enforced as an Order of the Supreme 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: August 17, 2017

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Residential Tenancy Branch