



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on December 21, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The landlord's agent (the agent) attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that she sent the application package, along with her supporting evidence to each of the tenants on October 16, 2017, by registered mail. I find the tenants are deemed to have received this package on October 21, 2017, the fifth day after their registered mailings, pursuant to Section 90 of the *Act*.

The agent has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the agent requested to amend her application to allow her to retain the security deposit to offset rent owed and to recover the cost of the filing fee. In consideration of these requests, I hereby amend the agent's application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenants for the cost of this application?

#### Background and Evidence

The agent testified that rent in the amount of \$1,250.00 is due on the first day of each month. The agent further testified that they hold a security deposit in the amount of \$600.00.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which she stated was posted to the tenants' door on September 11, 2017. Service of this document was witnessed by a third party. The 10 day Notice specified that the tenants owed \$3,250.00 in rent at that time.

The agent stated that the Tenants still owe rent as follows:

- \$850.00 for July 2017
- \$1,150.00 for August 2017
- \$1,250.00 for September 2017
- \$1,250.00 for October 2017
- \$1,250.00 for November 2017
- \$1,250.00 for December 2017
- **Total:** \$7,000 in unpaid rent as of the time of this hearing.

The Agent testified that the Tenants have not paid rent for several months and only made partial payments in July and August of 2017, as above.

#### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants had a balance of unpaid rent at the time the 10 Day Notice was issued. On September 11, 2017, the 10 Day Notice was posted to the Tenants front door. Pursuant to section 90 of the *Act*, I find the Tenants received this notice on September 14, 2017, the 3<sup>rd</sup> day after it was posted.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The agent is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

With respect to the agent's request for a monetary order for unpaid rent, I find there is sufficient evidence from the agent to demonstrate that the tenants owe and have failed to pay \$7,000.00 in rent over the last few months, as specified above. The agent requested that they be able to retain the security deposit of \$600.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the agent, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

**Claim**

**Amount**

Cumulative unpaid rent	\$7,000.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Agent	(\$600.00)
<b>TOTAL:</b>	<b>\$6,500.00</b>

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,500.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 21, 2017

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Residential Tenancy Branch