



# 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 for Dispute Resolution, made on November 30, 2017 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing in person and provided affirmed testimony. The Tenants did not attend the hearing.

The Landlords testified the Application package was served on the Tenants by registered mail on December 1, 2017. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenants are deemed to have received the Application package on December 6, 2017.

The Landlords were provided with 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 to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent or utilities?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlords testified the tenancy began on November 1, 2016. Currently, rent in the amount of \$700.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$350.00 and a pet damage deposit of \$350.00, which the Landlords hold.

The Landlords testified rent was not paid in full when due on November 1, 2017. They testified the Tenants withheld \$200.00 to pay for a truck battery so the truck could be used to plow snow on the rental property. The Landlords denied an agreement was made permitting the Tenants to withhold rent, and testified that the Tenants were specifically asked to return the battery and pay the outstanding rent.

As rent was not paid when due, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 12, 2017 (the "10 Day Notice"). According to the Landlords' Application, the 10 Day Notice was served on the Tenants by registered mail on November 18, 2017. Rent in the amount of \$200.00 remains outstanding.

The Tenants did not attend the hearing to dispute the Landlords' evidence.

### Analysis

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

The Landlord sought an order of possession. In this case, the Landlord testified, and I find, that the Tenants were served with the 10 Day Notice by registered mail on November 18, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenants are deemed to have received the 10 Day Notice on November 23, 2017. Pursuant to section 46(4) of the *Act*, the Tenants had until November 28, 2017, to pay rent in full or

dispute the 10 Day Notice by filing an application for dispute resolution. As the Tenants did neither of these things, I find they are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, pursuant to section 46(5) of the *Act*. As a result, the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Further, the Landlord sought a monetary order for unpaid rent. Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement. In this case, the Landlord testified, and I find, that rent was not paid in full when due on November 1, 2017, and that \$200.00 is outstanding. Having been successful with the Application, I also find the Landlord is entitled to recover the filing fee. Accordingly, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$300.00, which is comprised of \$200.00 in unpaid rent and \$100.00 in recovery of the filing fee.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$300.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 14, 2018

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Residential Tenancy Branch