



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR FF

### Introduction

This participatory hearing was convened after the issuance of a January 19, 2018 Interim Decision of an Adjudicator. The Adjudicator determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlords. The Adjudicator reconvened the landlords' application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

Landlord E.E. attended the hearing for the landlords (the "landlord"), while the tenants did not attend. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Utilities ("10 Day Notice") was posted on the door of the tenants' unit on two occasions; the first notice being posted December 28, 2017, with the second being posted on January 4, 2018. Pursuant to sections 88 and 90 of the *Act*, I find that the tenants were served with these 10 Day Notices on December 31, 2017 and January 7, 2018, three days after their respective postings.

The Tenants were sent individual Notices of Hearing by way of Canada Post Registered Mail. The landlord provided a copy of the Canada Post tracking numbers to the hearing.

Pursuant to sections 88 and 90 of the *Act*, the tenants are found to have been served the Notice of Hearing in accordance with the *Act*.

Following opening remarks, the landlord asked if she could amend her application for a monetary award to reflect unpaid rent for February and March 2018. The landlord said that the tenants are still in occupation of the unit and that no rent has been paid.

Pursuant to section 64(3)(c) of the *Act*, the landlords application for a monetary award is amended to reflect this unpaid rent.

#### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Can the landlords recover the filing fee?

Are the landlords entitled to a monetary award?

#### Background and Evidence

The tenancy in question began on August 15, 2015. This was a month to month tenancy with rent set at \$975.00 per month. A security deposit of \$487.50 continues to be held by the landlords.

The landlord gave testimony that her application for Direct Request was reconvened to a participatory hearing because an Adjudicator determined that the 10 Day Notice was unsigned.

The landlord explained that this was an oversight on her part, and said that she posted the notice on the door of the home with a witness. I accept the landlord's undisputed testimony that the notice was served to the tenants.

The landlord has applied for an Order of Possession and a Monetary Order of \$3,310.00 reflecting unpaid rent for the months of January, February and March 2018, along with unpaid rent of \$385.00 for December 2017. The landlord testified that the tenants continue to occupy the rental unit and that rent has not been paid.

#### Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy and failed to apply to cancel the landlords' 10 Day Notice within five days of receiving it. In accordance with section 46(5) of the *Act*, the tenants' failure to pay the outstanding rent within five days or to provide adequate evidence showing that rent was paid within five days of receipt of the 10 Day Notice 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 January 10, 2018, 10 days after its deemed service date of December 31, 2017. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

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

At the hearing the tenants did not attend or provide evidence that rent remained unpaid for January, February and March 2018, and partially for December 2017. I accept the landlord's undisputed testimony that this rent remains outstanding.

I find that the landlords are entitled to a monetary award of \$3,310.00 for unpaid rent.

As the landlords were successful in their application, they may recover the \$100.00 filing fee associated with the application. In partial relief of the monetary award, the landlords may retain the tenants' security deposit pursuant to the offsetting provisions contained in section 72 of the *Act*.

### Conclusion

The landlords 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 10 days of service of this Order, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order pursuant to section 67 of the *Act* for \$2,922.50 in favour of the landlords as follows:

Item	Amount
Unpaid partial rent for December 2017	\$385.00
Unpaid rent for January 2018	975.00
Unpaid rent for February 2018	975.00
Unpaid rent for March 2018	975.00
Less Security Deposit	(-487.50)
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$2,922.50</b>

The landlords are provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

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: March 21, 2018

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Residential Tenancy Branch