



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNDC-S, FF

### Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that each tenant was served with the notice of hearing package via Canada Post Registered Mail on April 6, 2018 and has provided copies of the Canada Post Customer Receipt Tracking labels as confirmation.

I accept the undisputed affirmed evidence of the landlord and find that the tenants have been properly served as per sections 88 and 89 of the Act via Canada Post Registered Mail on April 6, 2018 for each tenant. The tenants are deemed served 5 days later as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2016 on a fixed term tenancy ending on May 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated May 20, 2016. The monthly rent is \$1,100.00 payable on the 1<sup>st</sup> day of each month. A \$550.00 security deposit was paid. The landlord provided undisputed affirmed testimony that the tenancy continues.

During the hearing the landlord provided undisputed affirmed evidence that a late rent payment of \$4,000.00 was paid on April 26, 2018, and as of the date of this hearing only the outstanding water bills(utilities, \$1,377.25) and unpaid rent (\$1,000.00) for June 2018 are owed. During the hearing the landlord stated that prior to issuing the 10 Day Notice dated March 16, 2018 she had agreed to lower the monthly rent to \$1,000.00.

The landlord originally initially applied for an order of possession for unpaid rent and a monetary order for unpaid rent/utilities and recovery of the filing fee which consists of:

\$3,300.00	Unpaid Rent, \$1,100.00 X 3 months (
\$1,377.35	Unpaid Utilities (water, 2016-2018)
\$100.00	Filing Fee

The landlord claims that the tenant failed to pay rent for a 3 month period and was issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 16, 2018 and served it by regular mail on March 16, 2018. The 10 Day Notice sets out that the tenants failed to pay rent of \$2,200.00 that was due on March 1, 2018 and an effective end of tenancy date of April 1, 2018.

However, during the hearing the landlord clarified that monthly rent was agreed to be set at \$1,000.00 beginning February 1, 2018 during discussions with the tenants. As such, I find that the landlord's 10 Day Notice to be invalid as it incorrectly stated that rental arrears were \$2,200.00 for the February and March 2018 period, Making monthly rent \$1,100.00 as opposed to \$1,00.00 per month. I also note that the landlord accepted late rent of \$4,000.00 on April 26, 2018 after the effective end of tenancy date of April 1, 2018 without giving notice to the tenants that she still sought an end to the tenancy. As such, the 10 Day Notice is set aside and the tenancy shall continue. As

the landlord accepted rent payment of \$4,000.00 for the 4 month period (February, March, April and May 2018), I find that the landlord's monetary claim for unpaid rent for this period is dismissed.

The hearing proceeded only on the landlord's monetary claim of \$1,377.35 for unpaid utilities (water) which consists of:

\$433.28	Unpaid Water Utilities, 2016 to September 2017
\$568.73	Unpaid Water Utilities, September 30, 2017
\$36.48	Unpaid Water Utilities, October 30, 2017
\$18.67	Unpaid Water Utilities, November 30, 2017
\$100.73	Unpaid Water Utilities, December 31, 2017
\$88.25	Unpaid Water Utilities, January 31, 2018
\$75.97	Unpaid Water Utilities, February 28, 2018
\$150.10	Unpaid Water Utilities, March 31, 2018
\$302.71	Unpaid Water Utilities, April 30, 2018
\$1,774.92	Total

It was clarified with the landlord that although she submitted details totalling, \$1,774.92 the landlord had only applied for \$1,377.35 and that her claim would be limited to the amount filed. This is due to the unspecified amounts by the landlord that required extensive discussions to determine what was owed.

The landlord submitted copies of municipal water bill invoices for the period September 30, 2017 to April 30, 2018 in support of these claims. The landlord also provided a copy of a 2017 municipal property tax invoice which states that water utilities were not paid and attached to the property taxes totalling, \$404.22 as arrears. The landlord stated that the municipal administration confirmed non-payment of water utilities and that this amount with taxes would total, \$433.28. A review of the signed tenancy agreement (section 6) shows that the tenants are responsible for all utilities.

### Analysis

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, I accept the undisputed affirmed evidence of the landlord that the tenants failed to pay water utilities for the period September 1, 2017 to April 30, 2018 as provided in the submitted utilities invoices totaling, \$1,774.92. However, as stated previously the landlord's claim is limited to the amount filed of \$1,377.35.

The landlord has established a total monetary claim of \$1,377.35 for unpaid utilities. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

As the tenancy continues, I decline to make any orders regarding the security deposit.

### Conclusion

The landlord's claim for an order of possession for unpaid rent is dismissed. The landlord is granted a monetary order for \$1,477.35.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: June 12, 2018

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Residential Tenancy Branch