



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, MNDL-S, FFL

### Introduction

On May 18, 2018, the Landlords applied for a Dispute Resolution proceeding seeking the following under the Act, regulation, or tenancy agreement:

- An Order of Possession for unpaid rent and utilities;
- A Monetary Order for unpaid rent and utilities; and
- To recover the filing fee.

M.M. and J.M. attended the hearing as the Landlords; however, the Tenant did not attend the hearing. M.M. and J.M. provided a solemn affirmation.

J.M. advised that he served the Notice of Hearing package to the Tenant by hand on May 18, 2018 with M.M. as a witness. In accordance with sections 89 and 90 of the Act, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlords' Notice of Hearing package.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the Landlord entitled to a Monetary Order for damage to the rental unit?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

M.M. stated that the tenancy started on February 15, 2008 and the current rent was established at \$1,250.00 per month, plus one third of the utilities. Rent was due on the fifteenth of each month. A security deposit of \$550.00 was also paid.

M.M. submitted that the Tenant damaged the drywall and bathtub and consequently, M.M. is pre-emptively seeking \$1,000.00 compensation. He advised that there may be further damage after the rental unit is inspected at the end of tenancy.

M.M. also submitted that the Tenant had been in arrears for rent and utilities for a long period of time. He served the 10 Day Notice for Unpaid Rent (the "Notice") to the Tenant by hand on April 29, 2018. In accordance with section 88 of the Act, I am satisfied that the Tenant was served with the Notice. The Notice indicated that \$5,471.04 was outstanding on April 15, 2018.

M.M. submitted that as of May 15, 2018, the Tenant was in arrears \$5,538.19 in rent and utilities and that he has provided emails to the Tenant every month advising how much is owed and requesting payment. He provided evidence of his ledgers and his communications with the Tenant regarding these issues. He testified that June 2018 rent was not paid either; therefore, the amount of rent and past utilities owed as of June 15, 2018 was \$6,788.19. However, he advised that the Tenant had made four separate payments of \$700.00 on May 18, 2018, June 5, 2018, June 19, 2018, and July 1, 2018. As such, that amount outstanding is now **\$3,988.19**, not including utilities owed as of June 15, 2018.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

With respect to the Landlords' references to claims for compensation due to damage to the rental unit, these issues were not considered in the Application before me as the rental unit has not been vacated, and this request is premature. As such, these claims remain open for the Landlords to file against the Tenant if they choose to do so.

Section 26 of the Act states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenant has a right to deduct all or a portion of the rent.

Section 67 of the Act allows a Monetary Order to be awarded for damage or loss when a party does not comply with the Act.

As outlined above, the undisputed evidence is that the rent up to June 15, 2018 was not paid in full when it was due. In addition, as of the time of the hearing, utilities owed on May 15, 2018 were not paid in full when it was due after being given the 30-day written demand on May 15, 2018. Moreover, the Tenant did not dispute the Notice within the applicable timeframe. As the Landlords' Notice is valid and as the Tenant has not complied with the *Act*, I find that the Landlords are entitled to an Order of Possession. I also find that the Landlords are entitled to a Monetary Order in the amount of **\$3,988.19**, which is comprised of rent owed for past arrears including rent for June 15, 2018, and for past utilities as well. However, this amount does not include utilities owed as of June 15, 2018. In the hearing, M.M. stated that he did not wish to seek to apply the security deposit to offset the Monetary Order.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application. As such, I grant the Landlords a Monetary Order in the amount of **\$4,088.19**.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlords**

May 15, 2018 – Outstanding rent and utilities owed	\$5,538.19
June 15, 2018 – Rent	\$1,250.00
May 18, 2018 – Payment	-\$700.00
June 5, 2018 – Payment	-\$700.00
June 19, 2018 – Payment	-\$700.00
July 1, 2018 – Payment	-\$700.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$4,088.19</b>

#### Conclusion

I grant an Order of Possession to the Landlords **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are provided with a Monetary Order in the amount of **\$4,088.19** in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant 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: July 9, 2018

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Residential Tenancy Branch