



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR OPR FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 13, 2018, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on August 15, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord attended the hearing on her own behalf and provided affirmed testimony. The Tenants did not attend the hearing.

The Landlord testified the Application package was served on the Tenants by registered mail on August 13, 2018. Canada Post registered mail receipts were submitted in support. 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 Application package is deemed to have been received by the Tenants on August 18, 2018.

In addition, the Landlord testified the Amendment to an Application for Dispute Resolution (the "Amendment") was served on the Tenants by registered mail on August 15, 2018. Canada Post registered mail receipts were submitted in support. 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 Amendment is deemed to have been received by the Tenants on August 20, 2018.

The Landlord did not submit documentary evidence in response to the Application.

The Landlord was given 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.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

A copy of the original tenancy agreement between the Tenants and the previous owner of the rental property was submitted into evidence. It confirmed the tenancy began on June 15, 2017. Rent in the amount of \$2,100.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00, which the Landlord holds. However, the Landlord testified that one Tenant vacated the rental unit in July and that the remaining Tenant now has a new roommate.

The Landlord testified the Tenants have not paid rent when due. Specifically, the Tenants paid only \$1,050.00 for July 2018 and did not make any rent payment for August 2018. The Landlord testified to her belief that the Tenants did not feel obligated to pay rent in full because one Tenant moved out of the rental unit after giving the Landlord notice of his intention to do so.

In any event, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2018 (the "10 Day Notice"), which was served on the Tenants by leaving a copy attached to the door of the rental unit on that date. A Proof of Service form was submitted in support of service in this manner. Currently, rent in the amount of \$3,150.00 remains outstanding.

The Landlord testified she has no knowledge about an application for dispute resolution being filed by the Tenants.

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

### Analysis

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

There was one tenancy between the Landlord and the Tenants. Both Tenants are jointly and severally liable to pay rent in accordance with the tenancy agreement. That means both Tenants are fully responsible for the entire rent payment each month. Although one Tenant provided the Landlord with notice of his intention to vacate the rental unit, I find that did not have the effect of eliminating his obligation to the Landlord under the *Act* and the tenancy agreement. Specifically, section 26(1) of the *Act* confirms:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

[Reproduced as written.]

The Landlord sought an order of possession. In this case, the Landlord testified, and I find, that the 10 Day Notice was served on the Tenants by leaving a copy attached to the door of the rental unit on August 2, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenants are deemed to have received the 10 Day Notice on August 5, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until August 10, 2018, to pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. The Landlord testified the Tenants have not paid rent and that one of the Tenants continues to reside in the rental unit with a new roommate. Further, the Landlord testified she has no knowledge of an application for dispute resolution being filed by the Tenants. As a result, pursuant to section 46(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

The Landlord also sought a monetary order for unpaid rent. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,150.00. Having been successful, I find the Landlord is also entitled to recover the filing fee paid to make the Application. In the circumstances, I also find it is appropriate to order that the Landlord retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,150.00, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Unpaid rent:	\$3,150.00
Filing fee:	\$100.00
LESS security deposit:	(\$1,050.00)
LESS pet damage deposit:	(\$1,050.00)
<b>TOTAL:</b>	<b>\$1,150.00</b>

### 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 \$1,150.00. The monetary 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: September 7, 2018

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Residential Tenancy Branch