



# 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 by Direct Request Proceeding, made on November 20, 2018, which was adjourned to a participatory hearing (the "Application"). The Landlords 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 Landlords and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlords testified the Application package was served on the Tenant in person. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service and receipt of these documents. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act. The Tenant did not submit documentary evidence in response to the Application.

The parties were given an 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. 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 recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on May 1, 2018, and was expected to continue until May 1, 2019. Rent in the amount of \$1,500.00 per month is due on the first day of each month. After the tenancy began, the parties also entered into another agreement to rent a workshop for \$400.00 per month. The Tenant paid a security deposit in the amount of \$750.00, which the Landlords hold.

The Landlords testified the Tenant did not pay rent when due on November 1, 2018. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 6, 2018 (the "10 Day Notice"). At that time, rent in the amount of \$1,500.00 was outstanding. The Tenant subsequently made a partial payment of \$500.00 on November 2, 2018. \$100.00 was allocated to rent. \$400.00 was allocated to the rental of the workshop. The Landlords testified the 10 Day Notice was served on the Tenant by posting it on the door of the Tenant's rental unit on November 6, 2018. The Tenant did not dispute that it was received.

In addition, the Landlords testified rent for December 2018 was paid in full on December 3, 2018, but that no payment has been made for rent due on January 1, 2019. Currently, rent in the amount of \$2,900.00 is outstanding, which has been calculated as follows:

<b><i>Rent due date</i></b>	<b><i>Payment amount</i></b>	<b><i>Payment date</i></b>	<b><i>Outstanding</i></b>
<i>November 1, 2018</i>	<i>\$100.00</i>	<i>November 2, 2018</i>	<i>\$1,400.00</i>
<i>December 1, 2018</i>	<i>\$1,500.00</i>	<i>December 3, 2018</i>	<i>\$0</i>
<i>January 1, 2019</i>	<i>\$0</i>	<i>n/a</i>	<i>\$1,500.00</i>
<b><i>TOTAL:</i></b>			<b><i>\$2,900.00</i></b>

The Tenant testified that he and his partner have experienced financial difficulties in 2018, but are doing their best to get on track. The Tenant also referred to issues with the rental unit.

### Analysis

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

The Landlords sought an order of possession. In this case, the Landlords testified, and I find, that the 10 Day Notice was served on the Tenant by leaving a copy attached to the door of the Tenant's rental unit on November 6, 2018. The Tenant did not dispute receipt of the 10 Day Notice. 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 Tenant is deemed to have received the 10 Day Notice on November 9, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until November 14, 2018, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. The Landlords testified and the Tenant acknowledged that rent has not been paid in full. Further, there is insufficient evidence before me to conclude that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. Therefore, the Tenant is over-holding. The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In addition, 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.]

Further, I find the Tenant has not paid rent when due and that the Tenant has not established a right under the *Act* to deduct a portion of the rent. Therefore, I find that the Landlords have established an entitlement to a monetary order in the amount of

\$3,000.00, which is comprised of \$2,900.00 for unpaid rent and \$100.00 in recovery of the filing fee paid to make the Application.

Conclusion

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$3,000.00. 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: January 4, 2019

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Residential Tenancy Branch