



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, OPR, FF

### Introduction

On November 23, 2018 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

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

The hearing was scheduled for 1:30 am on January 8, 2019, as a teleconference hearing. Only the Landlords appeared at the hearing and provided affirmed testimony. No one called in for the Tenants. The conference call line remained open and was monitored for 35 minutes before the call ended.

The Landlords testified they served the Application package to each of the Tenants via Canada Post Registered Mail to the dispute address on November 23, 2018. The Landlords provided the tracking numbers pertaining to the Registered Mail receipts confirming these mailings. In the absence of evidence to the contrary, and pursuant to section 71 of the Act, I find the Application package was sufficiently served on the Tenants for the purposes of the *Act*.

All in attendance were 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.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent or utilities, pursuant to Section 46 and 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to retain the security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on September 22, 2018. Rent in the amount of \$2,400.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,200.00, which the Landlord holds.

The Tenants are also required to pay all utilities as per the tenancy agreement. The Landlords testified that the utilities are in their name and paid by the Landlords. The bills are then forwarded to the Tenant's for reimbursement to the Landlords.

The Landlords testified the Tenants did not pay rent when due in November 2018. The Landlords also testified that the Tenants did not pay utilities ever since the start of the tenancy. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, dated November 6, 2018 (the "10 Day Notice") with an effective vacancy date of November 16, 2018. At that time, rent in the amount of \$2,400.00 and utilities in the amount of \$241.12 was outstanding. The Landlords testified they served the 10 Day Notice on the Tenants in person on November 6, 2018.

In addition, the Landlords testified rent was also not paid when due in December 2018 and January 2019. Currently, rent in the amount of \$4,200.00 is outstanding. The landlords also indicate that the Tenants have failed to pay utilities in the amount of \$939.43.

The Landlords submitted a BC Hydro Billing Graph outlining the monthly consumption in relation to the Tenants rental unit from the start of their tenancy on September 22, 2018 until December 3, 2018 in the amount of \$684.07.

The Landlords also submitted three Telus Internet bills dated September 23, October 26, and November 23, 2018. The Landlords indicate that they are seeking repayment of \$85.12 for each of these bills for a total of \$255.36.

The Landlords indicate that the Tenants have made no payments toward any of the outstanding rent or utilities. As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(6) allows that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

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

In this case, I find that the 10 Day Notice was served on the Tenants in person on November 6, 2018. Pursuant to section 88 of the *Act*, I find the Tenants received the 10 Day Notice on the same day of service.

Pursuant to section 46(6) of the *Act*, a Landlord can treat the unpaid utility charges as unpaid rent and may give notice under this section if the tenancy agreement requires the tenant to pay utility charges to the Landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them. In this case, I find the Landlords failed to provide the Tenants with a written demand letter, therefore the unpaid utility charges cannot be treated as unpaid rent.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until November 11, 2018, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I am satisfied the Tenants have not paid rent and continue to reside in the rental unit. There is insufficient evidence before me to find that the Tenants disputed the 10 Day Notice.

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 November 16, 2018, the effective date of the 10 Day Notice.

The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

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.*

I find the Landlords have established an entitlement to a monetary award for unpaid rent for November, December 2018 and January 2019 in the amount of \$7,200.00.

In regards to the unpaid utilities, I find that the Tenants are required to pay all utilities as stated in the tenancy agreement. I find the Landlords have established an entitlement to a monetary award for the outstanding BC Hydro Bill in the amount of \$684.07.

Regarding the Telus Internet Bills, I find that the Tenants should not be expected to pay the bill dated September 23, 2018 as their tenancy began on September 22, 2018. However, I find the Landlords have established an entitlement to a monetary award in the amount of \$170.24 for the balance of the remaining Telus Bills.

Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords are entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$6,954.31, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$7,200.00
Unpaid utilities	\$854.31
Filing fee:	\$100.00
LESS security deposit:	(\$1,200.00)
<b>TOTAL:</b>	<b>\$6,954.31</b>

## Conclusion

The Landlords are granted an order of possession, which will be effective two (2) days after it is served on the Tenants. If the Tenants fail to comply with the order of possession it 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 \$6,954.31. This order must be served on the Tenants. If the Tenants fail to comply the monetary order it 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 08, 2019

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Residential Tenancy Branch