



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES LTD. (AKA: LONGWOOD LANDING) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities, to retain the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

An agent for the landlord KS ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and first documentary evidence package were served on the tenants by registered mail on January 18, 2019. The agent confirmed that the tenants were each served with their own registered mail package and that the package was addressed to the rental unit address as the tenants continue to occupy the rental unit as of the date of this hearing, February 22, 2019. The agent also provided two registered mail tracking numbers verbally, both of which have been included on the cover page of this decision for ease of reference and marked 1 and 2. According to the online registered mail tracking website information the registered mail packages were unclaimed. Based on the above, I find the tenants were deemed served with the Notice of Hearing, application and documentary evidence five days after the registered mail was sent in accordance with section 90 of the *Act*. Therefore, I find the tenants are deemed served on January 23, 2019.

In addition, the agent testified that a second documentary evidence package were sent by registered mail to both tenants on February 1, 2019, via separate packages and addressed to the rental unit. The two additional registered mail tracking numbers have also been included on the cover page of this decision for ease of reference and marked 3 and 4. According to the online registered mail tracking website information the registered mail packages were unclaimed. Based on the above, I find the tenants were deemed served with the second documentary evidence packages as of February 6, 2019.

As the tenants did not attend the hearing, I find that this application is undisputed and unopposed by the tenants. Therefore, the hearing continued without the tenants present.

### Preliminary and Procedural Matters

Firstly, the agent requested to increase their monetary claim from the original amount of \$2,199.50 to \$3,687.50 which would include loss of rent for February 2019 of \$1,488.00 as the rent until remains occupied by the tenants. The agent was advised that loss of February 2019 rent of \$1,488.00 would be included as I find the tenants would not be prejudiced by such an amendment as the tenants would know or ought to have known that by continuing to occupy the rental unit into February 2019, that a loss of rent would be suffered by the landlord. This amendment was also permitted pursuant to section 64(3) of the *Act*.

Secondly, the agent confirmed their email address at the outset of the hearing. The agent also confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenants, as an email address for the respondent tenants was not known by the agent.

In addition to the above, I have amended the name of the landlord corporate name pursuant to section 64(3) of the *Act*.

### Issues 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, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2018 and is scheduled to revert to a month to month tenancy after September 30, 2019. Monthly rent of \$1,488.00 is due on the first day of each month. The tenants paid a security deposit of \$744.00 and a pet damage deposit of \$400.00 at the start of the tenancy which the landlord continues to hold. There is no interest on the combined deposits which total \$1,144.00.

The agent confirmed service of the 10 Day Notice by posting to the tenants' door on January 7, 2019. The 10 Day Notice included an effective vacancy date of January 17, 2019 and indicated that \$3,043.50 was owed as of January 1, 2019. The agent stated that the tenants did not dispute the 10 Day Notice and did not pay the total amount owing as listed on the 10 Day Notice and as of the date of the hearing. The agent testified that the tenants owe \$711.50 for December 2018 rent, \$1,488.00 for January 2019 rent and \$1,488.00 for February 2019 rent.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as January 17, 2019. The effective date would automatically correct to January 20, 2019, pursuant to section 53 of the *Act* as documents posted to the tenants' door are deemed served three days after they were posted on January 7, 2019, pursuant to section 90 of the *Act*. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which corrects to January 20, 2019. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended as of January 20, 2019.

**Claim for unpaid rent and loss of rent** –The agents testified that the rental unit continues to be occupied and that \$711.50 remains owing for December 2018 rent and that no rent has been paid for January 2019 and February 2019. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy

agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,687.50**, as claimed.

The landlord is holding the tenants' combined deposits of \$1,144.00 which include \$0.00 in interest. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' combined deposits including \$0.00 in interest as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of December 2018 rent	\$711.50
2. Unpaid January 2019 rent	\$1,488.00
3. Loss of February 2019 rent	\$1,488.00
4. Filing fee	\$100.00
<b>Subtotal</b>	<b>\$3,787.50</b>
<i>Less tenants' combined deposits including interest of \$0.00</i>	<i>-( \$1,144.00 )</i>
<b>TOTAL OWING BY TENANTS TO LANDLORD</b>	<b>\$2,643.50</b>

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenants' combined deposits including \$0.00 in interest of \$1,144.00 from the **\$3,787.50** amount owing to the landlord. Therefore, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$2,643.50**.

## Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended January 20, 2019.

The landlord has established a total monetary claim of \$3,787.50 as indicated above. The landlord has been authorized to retain the tenants' combined deposits of \$1,144.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$2,643.50. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord and the decision will be sent by regular mail to the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 22, 2019

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Residential Tenancy Branch