



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FF

### Introduction

On November 16, 2018 the Landlords 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 granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30PM (Pacific Time) on February 5, 2019, as a teleconference hearing. Only the Landlords and the Landlords’ Agent J.P. appeared at the hearing. No one called in for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended.

The Landlords testified that they served the Application package and documentary evidence to the Tenant via Canada Post Registered Mail on November 16, 2018 to the forwarding address provided to the Landlords by the Tenant on the move out condition inspection report. The Landlords submitted a copy of the Registered Mail receipt as well as the condition inspection report in support. In the absence of evidence to the contrary, and pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later.

The Landlords 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.

### Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Should the Landlords be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?
3. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlords testified that the tenancy began on October 21, 2018. Rent in the amount of \$1,650.00 was due on the first day of each month. The Tenant was meant to pay a security deposit in the amount of \$825.00 as well as a pet deposit in the amount of \$825.00, however, the Landlords stated they only received a payment of \$775.00, which the Landlords currently hold. The Landlord stated that the Tenancy ended on November 11, 2018. The Landlords submitted a copy of the tenancy agreement between the parties in support.

The Landlords testified the Tenant did not pay rent in the amount of \$1,650.00 when due on November 1, 2018. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 3, 2018 (the "10 Day Notice") with an effective vacancy date of November 13, 2018. The Landlords stated that the 10 Day Notice was served on the Tenant in person on November 3, 2018. The Landlords submitted a witnessed proof of service form in support.

The Landlords testified that the Tenant vacated the rental unit on November 11, 2018. As noted above, the Tenant did not attend the hearing to dispute the Landlords evidence.

### Analysis

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

The Landlords served the 10 Day Notice on the Tenant in person. Pursuant to sections 88 and 90 of the *Act*, I find the Tenant is deemed to have received the 10 Day Notice on November 3, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until November 8, 2018, to either pay rent in full or dispute the 10 Day Notice by filing an Application for dispute resolution. The Landlords testified the Tenant has not paid rent for November 2018 and has since vacated the rental unit on November 11, 2018.

There is no evidence before me to find 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.

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 in the amount of \$1,650.00. 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 portion of the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$975.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,650.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$775.00)
<b>TOTAL:</b>	<b>\$975.00</b>

Conclusion

The Landlords are granted a monetary order in the amount of \$975.00. The monetary order should be served to the Tenant as soon as possible and 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: February 20, 2019

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Residential Tenancy Branch