



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the “Act”) for

- an Order of Possession;
- a monetary order for unpaid rent; and,
- reimbursement of the filing fee.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for the duration of the hearing to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenants.

The landlord testified that the tenants were served the notice of dispute resolution package via registered mail on February 6, 2019. The Canada Post tracking number is referenced on the first page of this decision. I find that the tenants were deemed served with this package on February 11, 2019, five days after it was mailed, in accordance with sections 89 and 90 of the *Act*.

The landlord filed an amendment correcting the address of the rental unit and requesting reimbursement of utility expenses. The landlord testified that the tenants were served the amendment via registered mail on February 22, 2019. The Canada Post tracking number is referenced on the first page of this decision. I find that the

tenants were deemed served with this package on February 27, 2019, five days after the amendment was mailed, in accordance with sections 89 and 90 of the *Act*.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") and posted the notice on the door of the tenant's rental unit on January 14, 2019. The Ten-Day stated unpaid rent of \$1,380.00 as of January 1, 2019. The notice stated a move out dated of January 27, 2019. I find that the Ten-Day notice is deemed to have been served three days after it was posted, being January 17, 2019 in accordance with sections 89 and 90 of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The landlord testified that the tenancy started on December 1, 2018 and the rent was \$1,275.00 payable on the first day of each month. The tenants paid a \$640.00 security deposit.

The landlord testified that the tenants only made a partial rent payment of \$1,170.00 in December 2019 and the tenants did not pay any rent in January 2019 or anytime thereafter.

The tenancy agreement stated that electric utilities were separately metered and the tenants were required to pay for their electric utilities. The landlord testified that the tenants did not pay any of the utilities despite the landlord making multiple written demands. The landlord testified that she was required to pay the tenants' electric utilities herself because she was secondarily responsible for the utilities as the property owner.

The landlord submitted an electric utility invoice for the billing period of November 9, 2018 to January 9, 2019 with utility charges of \$288.43. In addition, the landlord presented a utility statement estimating utility fees of \$348.00 for the period of January 10, 2019 to March 11, 2019. The landlord seeks reimbursement of the utility expenses.

The landlord testified that the tenants still live in the rental unit.

### Analysis

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served by posting the notice on the tenant on January 14, 2019. Section 90 of the *Act* states that a notice served by posting is deemed to have served three days after posting, being January 17, 2019. Accordingly, the tenants had five days after the deemed date of service of January 17, 2019 to pay the rent or dispute the notice, that date being January 22, 2019. However, the tenants did not pay the rent or file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 46(5) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy for cause are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenants did not file an application to dispute the landlords' Ten-Day Notice in accordance with the *Act*, I find that the tenants are conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being January 27, 2019. Accordingly, I grant the landlords' application for an order for possession pursuant to section 55 of the *Act*.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,275.00, on time and in full each month, up to and including the rental period ending January 31, 2019.

I find that the tenants made a partial rent payment of \$1,170.00 in December 2018 and the tenants did not pay any rent for January 2019. Section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$105.00 for unpaid rent in December 2018 and \$1,275.00 for unpaid rent in January 2019.

I also find that the Tenant owes \$1,936.95 for overholding the rental unit for the period of February 1, 2019 to March 15, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on January 27, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on March 15, 2019.

*Residential Tenancy Policy Guideline #3* states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental period of February 1, 2019 to February 28, 2019, the landlords are entitled to receive a total of \$1,275.00 for overholding that period. In addition, since the tenants remained in the rental unit in March 2019 to the date of this hearing on March 15, 2019, I find that the landlord is entitled to overholding rent in the amount of \$661.95 (fifteen days at the per diem rate of \$41.13).

The landlord also requested reimbursement for the tenants' electric utility expenses. Based upon the landlord's undisputed testimony and the terms of the tenancy agreement, I find that the tenants have an obligation under the tenancy agreement to pay their electric utility expenses. As such, I find that tenants are obligated to reimburse the landlord for the electric utility expenses pursuant to section 71(1) of the *Act*.

The electric utility invoice for the billing period of November 9, 2018 to January 9, 2019 had charges of \$288.43 which represents a per diem rate of \$4.65. Since the tenants were in possession of the rental unit from December 1, 2018 for 40 days during that billing cycle, I find that the tenants are responsible for \$186.00 of the utility charges from that billing period (40 days times \$4.65 per diem). In addition, the tenants are also responsible for the \$348.00 of estimated utility expenses from January 10, 2019 to March 11, 2019. Accordingly, I find that the tenants have incurred \$534.00 in reimbursable utility expenses. However, since the landlord only requested reimbursement of \$467.00 in utility expense her amendment to her application for

dispute resolution, I only grant the landlord a monetary order of \$467.00 for reimbursement of electric utilities.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$640.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$3,243.95, calculated as follows.

<u>Item</u>	<u>Amount</u>
December 2018 rent unpaid	\$105.00
January 2019 rent unpaid	\$1,275.00
February 2019 overholding damages	\$1,275.00
March 2019 overholding damages	\$661.95
Reimbursement of utility expenses	\$467.00
Less security deposit	-\$640.00
Filing fee	\$100.00
Total	\$3,243.95

### Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlords a monetary order in the amount of **\$3,243.95**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that Court.

I grant the landlord's application for reimbursement of the filing fee.

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: March 19, 2019

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Residential Tenancy Branch