



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, FFL MNDCL-S MNRL-S

### Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord sought the following remedies:

1. an order of possession of the rental unit for unpaid rent;
2. compensation for unpaid rent and utilities; and,
3. compensation for the filing fee.

A dispute resolution hearing was convened on March 15, 2019 at 9:30 AM and the landlord attended. She was given the opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend the hearing.

The landlord testified that she served the Notice of Dispute Resolution Proceeding package on or about January 28, 2019, by attaching it to the door at the address at which the tenants reside. As such, I find that the landlord served the tenants with the Notice of Dispute Resolution Proceeding in compliance with section 89(2)(d) of the Act.

In reviewing the Residential Tenancy Branch's audit notes after the hearing concluded, I note that there is an entry by an information officer indicating that the tenants were fully aware of the hearing:

2019-03-15 9:48:57 AM [NAME OF INFORMATION OFFICER]

TT called in to advise they were not able to participate in the scheduled hearing set for TODAY at 930. Reason being is they were packing and moving and misplaced the NOH. After verifying ID I provided call in phone #'s and part.code and I provided information regarding App for Rev Consideration.

I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, but only evidence relevant to the issues of this application are considered in my decision.

### Issues to be Decided

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to compensation for unpaid rent and utilities?
3. Is the landlord entitled to compensation for the filing fee?

### Background and Evidence

The landlord testified and confirmed that the tenancy began in November 2017. Monthly rent is \$900.00, due on the first of the month, and the tenants paid a security deposit of \$450.00. There is no written tenancy agreement.

On January 14, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). Service was executed by being attached to the tenants' door. The Notice, a copy of which was submitted into evidence, indicated that the tenants owed unpaid rent in the amount of \$9,000.00 and unpaid utilities in the amount of \$1,049.55. I note that there is a discrepancy between the \$9,000.00 in rent owing on the Notice and the amount of \$7,650.00 on the Direct Request Worksheet.

The landlord submitted a copy of a Direct Request Worksheet which listed unpaid rent going as far back as July 2018, with zero rent being paid for the months of September 2018 to January 2019. The landlord further testified that the tenants have not paid rent for February or March 2019.

As of today, based on the amounts reflected in the Notice, the tenants owe \$10,800.00 in unpaid rent and \$1,049.55 in unpaid utilities for a total amount of \$11,849.55.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Order of Possession**

The landlord seeks an order of possession pursuant to sections 46 and 55 of the Act. Sections 46(4) and (5) state the following:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

In this case, the Notice was posted on the tenants' door, and is presumed to have been received by the tenants on the third day after it was posted, as per section 90(c) of the Act. The tenants did not pay rent or make an application for dispute resolution within 5 days after receiving the Notice. As such, as per section 46(5) of the Act, I find that the tenants conclusively presumed to have accepted that the tenancy ended on January 23, 2019.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the tenants' failure to pay rent and utilities, and regarding the tenants' failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenants.

### **Order for Compensation**

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support her submission, that the tenants have not paid for several months, and have not paid utilities. There is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and, no evidence indicating that they applied to cancel the Notice.

Taking into consideration the undisputed oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for compensation for unpaid rent and utilities in the amount of \$11,849.55.

As the landlord was successful in her application I grant an additional monetary award of \$100.00 for recovery of the filing fee.

I order that the landlord may retain the tenants' security deposit of \$450.00 in partial satisfaction of the awards.

A total monetary order of \$11,499.55 for the landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent and utilities	\$11,849.55
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$450.00)
Total:	\$11,499.55

### Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$11,499.55, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 15, 2019

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Residential Tenancy Branch