



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU MNRL-S FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) by the landlords to obtain an order of possession for unpaid rent or utilities, for a monetary order in the amended amount of \$5,333.92 for unpaid rent and utilities, for authorization to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The tenant and an agent for the landlord HB (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were 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 matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed having been served with the original application and the amended application by the landlords and that the tenant had the opportunity to review the landlords' documentary evidence prior to the hearing. The tenant also confirmed that they did not serve any documentary evidence on the landlords in response to the application and amendment.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision will be sent to both parties by email. The landlords will be sent the order of possession and monetary order by email, which must be served on the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on March 17, 2018. Monthly rent in the amount of \$1,700.00 was due on the first day of each month. A security deposit of \$850.00 was paid at the start of the tenancy, which the landlords continue to hold. The agent stated that the landlords would like to retain the tenant's security deposit to offset any monetary claim.

The landlord submitted a copy of the 10 Day Notice for Unpaid Rent or Utilities dated December 7, 2019 (10 Day Notice) in evidence. The landlord testified that the 10 Day Notice was posted to the tenant's door on December 7, 2019. The tenant testified that they received the 10 Day Notice on December 9, 2019 and did not file an application to dispute the 10 Day Notice. The effective vacancy date on the 10 Day Notice is listed as December 13, 2019. The amount listed as owing is \$1,550.00 due December 1, 2019. The tenant confirmed that \$1,550.00 remains owing for December 2019, and the tenant also confirmed that \$1,700.00 was not paid for January 2020 or February 2020 and that the tenant continues to occupy the rental unit as of the date of this hearing, February 28, 2020.

The landlord is claiming \$5,333.92 in unpaid rent, loss of rent and unpaid utilities as follows:

1. December 2019 - \$1,550.00 unpaid rent
2. January 2020 - \$1,700.00 unpaid rent
3. February 2020 - \$1,700.00 unpaid rent/loss of rent
4. Hydro bill Dec to Jan - \$139.00
5. Fortis gas bill Dec to Jan - \$244.92

The landlords are seeking to retain the tenant's security deposit towards any amount owing and wants an order of possession as soon as possible.

The tenant claims that they attempted to pay a portion of rent, which the agent disagreed with during the hearing.

### Analysis

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

**Order of Possession** – Firstly, I find that the tenant admitted to not paying \$1,550.00 for December 2019 rent, and \$1,700.00 for January 2020 and \$1,700.00 for February 2020. I also find the tenant did not dispute the 10 Day Notice at all and has not paid the rent owing indicated on the 10 Day Notice and that the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice; which in the matter before me would be December 19, 2019, as the 10 Day Notice was stated as received by the tenant on December 9, 2019. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on December 19, 2019.

**Claim for unpaid rent, loss of rent and unpaid utilities**– Firstly, I have reviewed the tenancy agreement and find that it does not include a term that states that utilities are the responsibility of the tenant. Therefore, I dismiss the landlords' claim for unpaid utilities in the amounts of \$139.00 and \$244.92, due to insufficient evidence, without leave to reapply.

I find the tenant breached section 26 of the Act, which states that a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has 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 landlords have met the burden of proof and has established a monetary claim of **\$4,950.00** comprised of \$1,550.00 owing for December 2019 rent, \$1,700.00 for unpaid/loss of January 2020 rent, and \$1,700.00 for unpaid/loss of February 2020 rent.

As the landlords have succeeded with their application, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act. The tenant's security deposit of \$850.00 has accrued \$0.00 in interest since the start of the tenancy.

**Monetary Order** – I find that the landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit which has accrued no interest as follows:

Unpaid portion of December 2019 rent	\$1,550.00
Unpaid/loss of January 2020 rent	\$1,700.00
Unpaid/loss of February 2020 rent	\$1,700.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$5,050.00</b>
<i>(Less Tenant's Security Deposit of \$850.00 with \$0.00 in interest)</i>	<i>-( \$850.00)</i>
<b>TOTAL OWING BY THE TENANT TO LANDLORDS</b>	<b>\$4,200.00</b>

Based on the above, I authorize the landlords to retain the tenant's full \$850.00 security deposit pursuant to section 38 of the Act towards the amount owing. I also grant the landlords a monetary order pursuant to section 67 of the Act in the amount of **\$4,200.00** as indicated above.

### Conclusion

I find that the landlords have proven their claim and is, therefore, entitled to an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended December 19, 2019.

I find that the landlords have established a total monetary claim of \$5,050.00 as described above. I authorize the landlords to retain the tenant's full security deposit of \$850.00 in partial satisfaction of the claim, and I grant the landlords a monetary order under section 67 of the Act for the balance owing by the tenant to the landlords in the amount of \$4,200.00. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The order of possession and monetary order will be emailed to the landlords only for service on the tenant.

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 28, 2020

---

Residential Tenancy Branch