



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on March 12, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's agent (referred to as the Landlord) attended the hearing and provided testimony. One of the occupants, S.W., who was listed as a Tenant on the Landlord's application attended the hearing and stated that he is not a tenant, and never entered into a tenancy agreement with the Landlord. A copy of the Tenancy Agreement was reviewed in the hearing, and I note S.W. never signed the tenancy agreement. Rather, the agreement was signed and entered into by the other two tenants, A.D., and A.S.

An occupant of a rental unit is not necessarily a Tenant and is not obligated to fulfill the term so the Tenancy Agreement. Therefore, I have amended the application (under the doctrine of privity of contract ) to exclude S.W. as the respondent as he is not properly named on the Tenancy Agreement.

The doctrine of privity of contract is a common law principle which provides that a contract cannot confer rights nor impose its obligations upon any person who is not a party to the contract. The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such. The hearing proceeded against the remaining two tenants listed on the Tenancy Agreement, A.D., and A.S. The occupant S.W. confirmed he was not acting as an agent for either of the Tenants, and after I

removed him (during the hearing) as a respondent, he disconnected and the hearing proceeded.

Neither of the two remaining Tenants attended the hearing. The Landlord testified that she sent the application package to each of the Tenants individually, along with her supporting evidence, on February 6, 2020, by registered mail. The Landlord provided tracking information to corroborate that she sent the packages to the rental unit. I find the Tenants are deemed to have received this package on February 11, 2020, the fifth day after their registered mailing, pursuant to Section 89 and 90 of the *Act*.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

**Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the Landlord requested to amend her application to allow her to retain the security deposit to offset rent owed. In consideration of both of these requests, I hereby amend the Landlord's application accordingly.

The Landlord was provided 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.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

The Landlord testified that rent, in the amount of \$2,000.00, is due on the 30th day of each month, and that she holds a security deposit of \$1,000.00.

The Landlord testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the Tenants, personally, on January 7, 2020. The amount owing at that time was \$5,200.00. The Landlord stated that the Tenants owe rent as follows:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owing</b>
October 30, 2019	Rent Due	\$2,000.00	\$0.00	\$2,000.00
November 7, 2019	Rent Payment		\$800.00	\$1,200.00
November 30, 2019	Rent Due	\$2,000.00	\$0.00	\$3,200.00
December 30, 2019	Rent Due	\$2,000.00	\$0.00	\$5,200.00
January 30, 2020	Rent Due	\$2,000.00	\$0.00	\$7,200.00
February 29, 2020	Rent Due	\$2,000.00	\$0.00	\$9,200.00
March 30, 2020	Rent not yet due at time of hearing			
<b>Total Accrued Balance as of March 12, 2020</b>				<b>\$9,200.00</b>

### Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants owed past due rent at the time the 10 Day Notice was issued. The landlord personally served the 10 Day Notice to the Tenant on January 7, 2020, for \$5,200.00 in unpaid rent. I find the Tenants received the 10 Day Notice on January 7, 2020.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence the Tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. I note the Landlord applied to recover rent that was due as of March 30, 2020. However, as this due date has not passed, I find her application for the final month is premature. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence to demonstrate that the tenants owes and have failed to pay \$9,200.00 in past due rent as of the time of this hearing.

The Landlord requested that they be able to retain the security deposit of \$1,000.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$9,200.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Landlord	(\$1,000.00)
<b>TOTAL:</b>	<b>\$8,300.00</b>

Conclusion

The landlord is granted 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 landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$8,300.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 12, 2020

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Residential Tenancy Branch