



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## DECISION

**Dispute Codes:** OPR, CNR, MNR, MND, MNSD and FF

### **Introduction**

These applications were brought by both the landlord and the tenants.

By application of February 17, 2009, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy served on February 5, 2009 and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off against the balance.

In addition, as the tenants have not paid rent for March or February, I exercised my discretion under section 64(3)(c) of the Act to permit the landlord to amend his application to include rent for those months.

By application of February 18, 2009, the tenants sought to have the notice set aside, and return of the security deposit, a request based on the understanding that the current landlord has passed some portion of it to the previous landlord. That action would not endure without an Order to that effect and it is, therefore, moot at this point.

## **Issues to be Decided**

The issues to be decided are whether the landlord is entitled to an Order of Possession and whether he is entitled to a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

## **Background and Evidence**

This tenancy began on or about March 1, 2008. Rent is \$850 per month and the landlord holds a security deposit of \$420 paid on or about February 21, 2008. The present landlord took possession of the rental building in September of 2008.

Within that time and including the present one, the parties have been to dispute resolution six times. The majority of those dealt with a disagreement between the parties as to whether utilities were included in the rental agreement.

I take as the definitive statement on that issue, a decision dated July 18, 2008 following a hearing on the same date in which the dispute resolution officer found that, absent a written rental agreement that specifically made the tenants responsible for utilities, the landlord could not end the tenancy on their failure to pay them.

In the present hearing, the landlord submitted a copy of a rental agreement with the utilities "not" included box checked off. However, he had not provided the tenants with a copy of it and, the tenants gave evidence that the former owner had acknowledged checking that box off herself after the agreement had been signed.

In either case, the tenants are not permitted to withhold rent without consent, and I find no expressed Order from a previous dispute resolution proceeding overriding that requirement of the Act.

## **Analysis**

Section 26 of the act states that:

“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 do not find that the previous decisions or an expenditure for emergency repairs conferred a right upon the tenants to unilaterally withhold rent. Rather, I find that the tenants should have provided the landlord with copies of the billings and obtained his consent to withhold the appropriate amounts. If the landlord failed to agree, they were at liberty to make application for a Monetary Order against the landlord.

In view of that, and the fact that, at the time of the hearing, the tenants had not paid any rent for March or April, I find that the landlord is entitled to an Order of Possession. The parties agreed that the tenancy should end on April 30, 2009 and I perfect that agreement with an Order of Possession for the landlord.

As to the monetary settlements, as a preliminary ruling, I will accept the \$350 held back for January and February and their claims for \$231.93 to mid April as an approximate estimates of credit due to the tenants and direct the parties to make a final accounting at the end of the tenancy. I direct the tenants to provide the landlord with the billings and proof of payment.

I make no findings with respect to filing fees but I authorize the landlord to retain the security deposit in set off and grant him a monetary award calculated as follows:

January rent short fall	\$350.00
January NSF fee	25.00
January late fee	25.00
February rent shortfall	350.00
February late fee	25.00
March rent	850.00
March late fee	25.00
April rent	850.00
Sub total	\$2,500.00
Less utilities credit to tenants for January (to be adjusted)	- 350.00
Less utilities credit to tenants for February (to be adjusted)	- 350.00
Less utilities credit to tenants to mid April (to be adjusted)	- 231.93
Less retained security deposit	- 420.00
Less interest ( February 21/08 to date)	- 5.42
<b>TOTAL</b>	<b>\$1,142.65</b>

Again, the parties have agreed and I direct that they adjust the utilities credits to paid receipts when they become available.

In the interim, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$1,142.65 for service on the tenants.

The landlord will also receive an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on April 30, 2009.

April 2, 2009

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Dispute Resolution Officer