



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the issues in dispute. The male tenant (the tenant) confirmed that he was handed 10 Day Notices to End Tenancy for Unpaid Rent (the 1- Day Notices) on October 3, 2012 and November 2, 2012. The tenant confirmed that on November 1, 2012, both tenants signed a written notice, prepared by the female landlord, to end this tenancy by November 30, 2012. The tenant confirmed that the landlords handed the tenants copies of the landlords' dispute resolution hearing packages on December 3, 2012. I am satisfied that the above documents were served to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This periodic tenancy commenced on September 1, 2012. Monthly rent is set at \$1,000.00, payable in advance on the first of each month. According to a provision in the Residential Tenancy Agreement between the parties, the landlords were allowed to charge the tenants 1/3 of the utility costs if these costs escalated as a result of the tenancy. The landlords continue to hold the tenants' \$500.00 security deposit, of which

\$400.00 was paid on August 17, 2012 and a further \$100.00 was paid on August 29, 2012.

The landlords' 10 Day Notice identified \$1,000.00 in unpaid rent owing as of November 1, 2012. The landlords provided detailed written evidence of a series of receipts issued since the 10 Day Notice of November 2012 was issued. The tenant did not dispute the landlords' claim that \$881.06 remains owing for November 2012, \$1,000.00 is owing for December 2012, and \$1,000.00 is owing for January 2013. The tenant did not dispute the landlords' claim for a monetary award of \$2,881.06. The tenant testified that he had another rental unit arranged for January 15, 2013, but is unable to pay anything towards this existing tenancy as he is on social assistance and is of limited means at this time.

### Analysis

The tenants failed to pay the amount identified in the landlords' 10 Day Notice of November 2012 in full within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by November 12, 2012. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence before me, I find that the landlords are entitled to a monetary award of \$,881.06 for unpaid rent and utilities owing from November 2012, \$1,000.00 for unpaid rent for December 2012 and \$1,000.00 for unpaid rent for January 2013. As the landlords have been successful in their application, I find that they are entitled to recover their filing fee from the tenants. I also allow the landlords to retain the tenants' \$500.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

### Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms which allows the landlords to recover unpaid rent and utilities and the filing fee for this application, and to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid November 2012 Rent & Utilities	\$881.06
Unpaid December 2012 Rent	1,000.00
Unpaid January 2013 Rent	1,000.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,431.06</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 10, 2013

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Residential Tenancy Branch

