



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, 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 and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant 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 cross-examine one another. The female landlord (the landlord) confirmed that she was acting on behalf of both landlords, one of whom is her husband.

The landlord testified that she handed the tenant both pages of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on December 3, 2012. Although she said that the upstairs tenant in this rental property witnessed her hand this Notice to the tenant, the upstairs tenant did not provide any written statement, nor did she participate in this hearing. The tenant testified that the landlord posted only the first page of the 10 Day Notice on his door in mid-December 2012. The date of the landlord's two –page 10 Day Notice entered into written evidence by the landlord was December 13, 2012, the same as the effective date cited in that Notice.

The landlord testified that she handed the tenant a copy of the landlords' dispute resolution hearing package on December 15, 2012. The tenant testified that he found the landlords' hearing package posted on his door late in December or early in January. I am satisfied that the tenant was served with a copy of the landlords' dispute resolution hearing package in sufficient time to enable him to prepare for this hearing.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities? Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

Neither party was at all certain as to when this tenancy began. After some discussion, they agreed that the tenancy likely commenced about July 1, 2012. The only written evidence submitted for this hearing was a copy of the 10 Day Notice and a utility bill, both submitted by the landlord. The landlord testified that the terms of the oral agreement with the tenant called for the tenant's provision of a monthly payment of \$900.00, payable in advance on the first of each month, plus ½ of the utility cost for the lower level of this two-unit rental property. The landlord said that she prepared a written tenancy agreement for this tenancy, but the tenant refused to sign it. The tenant testified that his original tenancy agreement did not require him to pay any utility charge, a charge that the landlord subsequently requested a few months ago.

The landlord gave undisputed testimony that the landlords continue to hold the tenant's \$475.00 security deposit paid when the tenancy began.

The landlords' original application for a monetary award of \$962.16 included \$900.00 for unpaid rent for December 2012 and \$62.16, for one-half of a gas bill that was due for the period ending on November 7, 2012. At the hearing, the landlord requested authorization to amend the amount requested in the landlords' application to \$1,748.00, the amount that she claimed was now owing as a result of the tenant's failure to pay his January 2013 rent. I agreed to the landlord's request to amend the amount sought in the landlords' application for a monetary award to \$1,748.00.

At the hearing, there was conflicting evidence with respect to how much had been paid by the tenant since the 10 Day Notice was issued. The landlord said that the tenant frequently pays his rent late, in small cash payments. Despite this being the landlords' application for a monetary award for unpaid rent, the landlord had few actual details regarding the tenant's rent payments for December and January 2013. After testifying repeatedly that she did not know when the tenant had paid rent since the 10 Day Notice was issued, she modified that sworn testimony when she stated that the tenant paid \$150.00 on December 31, 2012, New Year's Eve. She also said the landlords' accepted a further rent payment of \$60.00 sometime in January 2013, the only rent payments that the tenant has made since the 10 Day Notice was issued.

Although the tenant testified that he had copies of rent receipts that show he has paid most of his December 2012 rent and some of his January 2013 rent, he did not have those receipts with him during this hearing. He said that the landlord does not issue receipts and that he has to write receipts and have one of the landlords sign them each time he pays rent. He said that he has found a new sub-tenant who is contributing to the rental for his suite, which should assist him in paying his rent in the future. The

tenant testified that \$100.00 remained owing from December 2012 and \$800.00 remains owing for January 2013. He said that he has been trying to pay the landlords these amounts, but the landlords have refused to accept his payments.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

1. The tenant agreed to pay the landlords \$900.00 in cash by 5:00 p.m. on January 18, 2013 at the rental unit.
2. The landlord agreed to accept the tenant's \$900.00 cash payment at the rental unit at 5:00 p.m. on January 18, 2013, to issue a written receipt for this payment and to issue written receipts for all future payments made by the tenant during the remainder of this tenancy.
3. Both parties agreed that this tenancy will continue if the tenant abides by the terms of this settlement agreement and pays \$900.00 in cash to the landlords by 5:00 p.m. on January 18, 2013.
4. Both parties agreed that this tenancy will end by 1:00 p.m. on January 20, 2013 if the tenant does not abide by the monetary terms of this settlement agreement and that the tenant will vacate the rental premises by 1:00 p.m. on January 20, 2013, if he does not abide by the monetary terms of this settlement agreement.
5. The landlord agreed to withdraw the tenants' application for dispute resolution for an Order of Possession based on the 10 Day Notice issued in December 2012.
6. Both parties agreed that for the duration of this tenancy the tenant will be responsible for 1/3 of the utility costs for this rental property.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues currently in dispute arising out of this tenancy, including the landlord's claim for a monetary award for rent and utilities owing as of the date of this hearing.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord(s) **only** if the tenant does not comply with the monetary terms of their agreement **and** fails to vacate the rental premises in accordance with their agreement. 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlords' favour in the amount of \$900.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of the above settlement. The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant 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 16, 2013

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Residential Tenancy Branch

