



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the filing fee, and "other" although no further details of "other" were provided by the landlord.

The landlord appeared at the teleconference hearing and gave affirmed testimony. The landlord was advised of the hearing process and was given the opportunity to ask questions about the hearing process during the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application"), and documentary evidence was considered. The landlord testified that the Notice of Hearing, Application and documentary evidence was served by registered mail to each of the two tenants separately on February 24, 2014 to the forwarding address provided by the tenants to the landlord in December of 2011. Two registered mail tracking numbers for the two registered mail packages was submitted in evidence by the landlord. The landlord stated that both registered mail packages were returned "unclaimed" by the tenants, which is supported by the documentary evidence submitted in evidence.

Section 90 of the *Act* states that documents served by registered mail are deemed served five days after the documents are mailed. As a result of the above, I find the tenants were deemed served under the *Act* as of February 29, 2014, which is five days after the registered mail packages were mailed to the tenants. I note that refusal or neglect to accept registered mail does not constitute grounds for a Review.

Preliminary and Procedural Matter

Following an earlier dispute resolution hearing held on December 15, 2011, a Decision was issued the same date, December 15, 2011. The file number is referenced on the front page of this Decision for ease of reference. In the December 15, 2011 Decision, the specific date of the end of tenancy was not indicated. In the matter before me, the landlord testified that even after being served with an order of possession granted as part of the December 15, 2011 Decision, the tenants refused to comply with the two-day order of possession and remained in the rental unit until finally vacating on February 23, 2012.

As a result of the above, I accept the landlord's undisputed testimony that the tenants did not vacate the rental unit until February 23, 2012. **I find** that the tenancy ended as of February 23, 2012 as a result of the actions of the tenants by refusing to vacate the rental unit until that date.

The landlord filed the application on February 21, 2014. As a result, **I find** the landlord complied with the *Act* by filing his application within two years of the end of tenancy date.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A periodic, month to month tenancy began on June 1, 2011. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. The landlord stated that the tenants did not pay a security deposit or pet damage deposit.

The landlord testified that the tenants did not vacate the rental unit until February 23, 2012. The landlord has claimed for \$4,393.80 comprised of the following:

| Item # | Description   | Amount     |
|--------|---|------------|
| 1      | Unpaid rent for the months of January and February of 2012 (calculated at \$1,000.00 per month for a total of two months) | \$2,000.00 |

|              |   |                   |
|--------------|---|-------------------|
| 2            | Unpaid hydro utilities for the months of January and February of 2012 (calculated at \$80.00 per month for a total of two months) | \$160.00          |
| 3            | Writ of Possession (Supreme Court fee)  | \$120.00          |
| 4            | Court Bailiffs costs  | \$2,113.80        |
| <b>TOTAL</b> |   | <b>\$4,393.80</b> |

Item #1 is for \$2,000.00 for unpaid rent for the months of January 2012 and February 2012, as the tenants did not vacate the rental unit until February 23, 2012. The amount of \$2,000.00 is comprised of \$1,000.00 in unpaid rent for the month of January 2012, and \$1,000.00 for the month of February 2012. The landlord testified that the tenants failed to pay rent for the months noted above.

Item #2 is for \$160.00 for unpaid hydro utilities for the months of January 2012 and February 2012, calculated at \$80.00 for each of the two months. The landlord referred to the addendum to the tenancy agreement dated June 9, 2011, and signed by the parties, which supports that the tenants agreed to pay \$80.00 each month for hydro utilities. The addendum indicates that the hydro utilities were on an equalized payment plan, which meant the tenant's portion remained at \$80.00 each month. The landlord testified that the tenants failed to pay hydro utilities for the months noted above.

Item #3 is for \$120.00, the cost of applying to the Supreme Court for a Writ of Possession due to the tenants refusing to vacate the rental unit after being served with the two-day Order of Possession dated December 15, 2011. A copy of the Supreme Court receipt in the amount of \$120.00 was submitted in evidence, which is dated February 15, 2012.

Item #4 is for \$2,113.80, the total cost of hiring a court bailiff to forcibly remove the tenants after they failed to comply and vacate the rental unit after being served with a two-day Order of Possession. A copy of receipts from the bailiff company supporting the total amount of \$2,113.80 was submitted in evidence. A letter dated February 28, 2012, indicates that the Writ of Possession was executed by the court bailiff as ordered by the Supreme Court of British Columbia on February 23, 2012.

### Analysis

Based on the documentary evidence, the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Items 1 to 4** – Based on the undisputed testimony of the landlord, and the documentary evidence submitted, **I find** that the landlord has met the burden of proof for his entire monetary claim. Section 26 of the *Act* requires that tenants pay their rent when it is due under the tenancy agreement. **I find** the tenants breached section 26 of the *Act* by failing to pay rent for the months of January and February 2012 and as a result, the landlords are entitled to **\$2,000.00** as compensation for unpaid rent.

**I find** the landlord is entitled to recover the unpaid hydro utilities in the amount of **\$160.00** for the months of January and February of 2012, comprised of \$80.00 for each of the two months claimed.

**I find** the landlord is entitled to recover the **\$120.00** cost of applying to the Supreme Court of British Columbia for a Write of Possession, as the tenants failed to comply with the two-day Order of Possession dated December 15, 2011, and remained in the rental unit until being forcibly evicted by a court bailiff on February 23, 2012. Furthermore, **I find** the landlord is entitled to recover the **\$2,113.80** cost of hiring a court bailiff as described above.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$4,443.80** comprised of \$4,393.80 for items 1 to 4 as claimed by the landlord, plus the \$50.00 filing fee. I grant the landlord a monetary order pursuant to section 67 in the amount of \$4,443.80. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord's application had merit.

The landlord has been granted a monetary order pursuant to section 67 in the amount of \$4,443.80. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: June 27, 2014

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Residential Tenancy Branch

