



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants, "tenant AH" and "tenant GC" did not attend this hearing although it lasted approximately 55 minutes. The two landlords, landlord ARL ("landlord"), "landlord ML," and their "agent KL" (collectively "landlords") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that he personally served tenant GC with a 10 Day Notice to End Tenancy for Unpaid Rent, dated December 16, 2014 ("10 Day Notice"), on the same date. The landlords attached a witnessed proof of service, signed on December 16, 2014, with their application. In accordance with section 88 of the *Act*, I find that the tenants were served with the 10 Day Notice on December 16, 2014.

The landlord testified that he served the tenants with the landlords' Application for Dispute Resolution Hearing notice and first written evidence package on January 12, 2015 and the second written evidence package on January 15, 2015 (collectively "Application"), by way of registered mail. The landlords provided Canada Post customer receipts and tracking numbers as proof of service with their Application. In accordance

with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's hearing notice and first written evidence package on January 17, 2015 and the second written evidence package on January 20, 2015, five days after each of their registered mailings.

During the hearing, the landlords withdrew their application to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order. The landlords indicated that they wished to offset the security deposit against any potential damage or rent amounts owing when this tenancy ends. Accordingly, this application is withdrawn.

### Issues 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that this month to month tenancy began on September 1, 2014 and is to end on August 31, 2015. Monthly rent in the amount of \$1,450.00 is payable on the 1<sup>st</sup> day of each month. A security deposit of \$725.00 was paid by the tenants on August 30, 2014 and the landlords continue to retain this deposit. A written tenancy agreement, which was signed by all parties, was provided with the landlords' Application. The tenants occupy the main floor of a house, along with their two children.

The landlord indicated that rent for September 2014 only was in the amount of \$1,160.00, as indicated on the tenancy agreement, as the parties agreed to this prorated amount since the tenants intended to take possession on September 7, 2014. A move-in date of September 7, 2014 is also indicated on the tenancy agreement. The landlord indicated that the rental unit keys were provided to the tenants on September 7, 2014, but the tenants moved in a few days later, although he is unsure of the exact date. The tenancy agreement also indicates that monthly rent in the amount of \$1,450.00 is due for each subsequent month after September 2014, payable on the first day of each month.

The landlord testified that he went to the rental unit approximately one week before this hearing and noticed that most, but not all, of the tenants' possessions were removed from the unit. The landlords indicated that they were still seeking an order of possession against the tenants for this rental unit, as they were unsure whether they had vacated. The landlords indicated that they have unsuccessfully tried to contact tenant AH for the past few weeks but have not received a response. The landlord stated that he was advised by neighbours of the rental unit that tenant GC passed away on January 18, 2015.

The landlords provided a monetary worksheet with their Application, outlining the amounts owed and paid for this tenancy, with respect to rent, utilities and NSF fees.

The landlords issued the 10 Day Notice, indicating that rent in the amount of \$2,900.00 was due on December 1, 2014 and \$276.00 for utilities was due following a written demand on December 11, 2014. The notice indicates an effective move-out date of December 26, 2014.

The landlord stated that rent in the total amount of \$3,360.00 is unpaid for this tenancy. The landlord stated that rent of \$6,960.00 was due from September 2014 to January 2015 inclusive, as follows: \$1,160.00 for September 2014 and \$1,450.00 for each of October 2014 to January 2015. The landlord indicated that cash payments totalling \$3,600.00 were made by the tenants towards rent as follows: \$1,200.00 on October 4, 2014, \$900.00 on October 24, 2014, \$1,000.00 on November 7, 2014, \$300.00 on December 18, 2014, and \$200.00 on December 27, 2014.

During the hearing, the landlords amended their claim to request \$180.00 instead of \$360.00 for NSF cheque charges. The landlord stated that a \$45.00 NSF fee was incurred from the landlords' bank on 4 occasions when they cashed the tenants' rent cheques and they were returned for insufficient funds. The landlords provided copies of each of these NSF cheques as well as notices from the bank that the cheques were returned for insufficient funds. The dates and amounts of these cheques are as follows: November 1, 2014 for \$1,450.00, November 17 for \$500.00, November 26 for \$600.00 and January 1, 2015 for \$1,450.00. The tenancy agreement at clause 7 indicates that \$45.00 will be charged to the tenants for each late payment and NSF cheque. The landlords indicated that two electronic wire transfer payments of \$400.00 on September 13 and \$700.00 on September 19, 2014 were unsuccessful as the tenants provided them with an incorrect password so the landlords were unable to retrieve any rent payments.

The landlord stated that hydro and gas utilities in the total amount of \$351.79 are unpaid for this tenancy. The landlord indicated that \$876.79 total was due from September 2 to December 18, 2014 for gas utilities and September 2 to December 19, 2014 for hydro utilities. The landlord stated that the tenants only paid \$525.00 cash towards these utilities on December 23, 2014. The landlords provided a copy of all the gas bills, totalling \$659.07 as follows: \$29.46 from September 2 to 19, 2014, \$153.72 from September 20 to October 22 (which includes the previous bill amount of \$29.46 plus a late payment charge of \$0.44), \$256.48 from October 23 to November 21 and \$248.87 from November 22 to December 18, 2014. The landlords provided copies of all the hydro bills, totalling \$217.72 as follows: \$86.40 from September 2 to October 22, 2014 and \$131.32 from October 23 to December 19, 2014.

The tenancy agreement at clause 20 indicates that the tenants are responsible to pay for hydro and gas utilities. The landlord testified that there was a verbal agreement with the tenants, made on September 7, 2014, that the tenants would pay utilities for the entire house unless there were occupants in the basement unit of the house, in which case the cost of utilities would be shared with the other occupants. The landlord stated that there were no occupants in the basement during this tenancy, so the tenants were responsible to pay all utilities for the entire house. The landlord indicated there was never an agreement for the landlords to pay any portion of the utilities for the house, as the landlords do not reside in the house. The landlord stated that hydro and gas utilities were kept in the landlords' name and the tenants were to pay the landlords directly for these costs. The landlord testified that he provided the tenants with copies of each of the above bills either the same day or the next day after the landlords received them. The landlords stated that they paid for the above outstanding utility amounts on behalf of the tenants to avoid service cancellation because they had concern for the tenants' two small children living in the house. The hydro and gas bills submitted by the landlords show that payments were made by the landlords for these utilities.

The landlords provided a number of emails from December 2014 to January 2015, regarding their communication with tenant AH. The emails document the landlords' attempts at notifying the tenants regarding unpaid rent and utilities, trying to collect rent from the tenants, attempting to contact the tenants, and referencing the 10 Day Notice served upon the tenants. The tenant AH responded to a few of the landlords' emails, acknowledging the outstanding rent owed, stating his intentions to pay rent, and indicating financial and work difficulties regarding his ability to pay rent.

The landlords are also seeking to recover the filing fee of \$100.00 for this Application from the tenants.

## Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not appear. The tenants failed to pay the full rent due on December 1, 2014, within five days of receiving the 10 Day Notice on December 16, 2014. The tenants only made a partial payment of \$300.00 on December 18, 2014, towards this outstanding rent balance, which did not reinstate the tenancy. Although other partial payments were made after the five day period, on December 23, 2014 (for utilities) and December 27, 2014 (for rent), totalling \$725.00, these payments did not cover the full rent amount and did not reinstate the tenancy. The tenants have not made an 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 failure of the tenants to take either of these actions within five days led to the end of this tenancy on December 26, 2014, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 26, 2014. As this may not have occurred, I find that the landlords are entitled to a 2 day Order of Possession against the tenants.

The landlords provided undisputed evidence that the tenants failed to pay a total of \$3,360.00 in rent from September 2014 to January 2015. Therefore, I find that the landlords are entitled to rental arrears in the amount of \$3,360.00 against the tenants.

The landlords provided undisputed evidence that the tenants failed to pay a total of \$180.00 in NSF charges from November 2014 through January 2015. This cost was agreed to by the tenants in their tenancy agreement, which they signed. Therefore, I find that the landlords are entitled to NSF fees in the amount of \$180.00 against the tenants.

The landlords provided undisputed evidence that the tenants failed to pay a total of \$351.79 from September 2 to December 18, 2014 for gas utilities and September 2 to December 19, 2014 for hydro utilities. These costs were agreed to by the tenants in their tenancy agreement, which they signed. The tenants agreed to pay for utilities for the entire house, as per their verbal agreement with the landlord. Therefore, I find that the landlords are entitled to unpaid gas and hydro utilities in the total amount of \$351.79 against the tenants.

The landlords indicated that they are seeking to recover unpaid rent of \$1,450.00 for February 2015. However, I advised the landlords that their application was premature, as this rent is not due until February 1, 2015, a date which had not yet occurred at the time of this hearing. Therefore, the landlord's application for a monetary order for

money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, with respect to February 2015 rent, is dismissed with leave to reapply.

The landlords also indicated that they were seeking to recover \$21.46 for the registered mailing of their Application to the tenants. I advised the landlords that this cost is not recoverable, as the only hearing-related costs that can be recovered as per section 72 of the *Act*, are with respect to filing fees.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee paid for their Application.

The landlords are cautioned with respect to section 38 of the *Act*, which states how a security deposit is to be used at the end of the tenancy:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord  
 (a) may not make a claim against the security deposit or any pet damage deposit, and  
 (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

### Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords are provided with a monetary order in the amount of \$3,991.79 in the following terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

| Item                                      | Amount     |
|---|------------|
| September 2014 Rent                       | \$1,160.00 |
| October 2014 Rent                         | 1,450.00   |
| Less partial payment on October 4, 2014   | -1,200.00  |
| Less partial payment on October 24, 2014  | -900.00    |
| November 2014 Rent                        | 1,450.00   |
| NSF fee for cheque from November 1, 2014  | 45.00      |
| Less partial payment on November 7, 2014  | -1,000.00  |
| NSF fee for cheque from November 17, 2014 | 45.00      |
| NSF fee for cheque from November 26, 2014 | 45.00      |

|   |                   |
|---|-------------------|
| December 2014 Rent  | 1,450.00          |
| Less partial payment on December 18, 2014   | -300.00           |
| Less partial payment on December 23, 2014   | -525.00           |
| Less partial payment on December 27, 2014   | -200.00           |
| January 2015 Rent   | 1,450.00          |
| NSF fee for cheque from January 1, 2015   | 45.00             |
| 2 Gas bills (September 2 to October 22, 2014 - includes \$29.46 and \$0.44 late payment charge for September 2 to 19, 2014 bill and \$123.82 for September 20 to October 22, 2014 bill) | 153.72            |
| Gas bill (October 23 to November 21, 2014)  | 256.48            |
| Gas bill (November 22 to December 18, 2014)   | 248.87            |
| Hydro bill (September 2 to October 22, 2014)  | 86.40             |
| Hydro bill (October 23 to December 19, 2014)  | 131.32            |
| Recovery of Filing Fee for this application   | 100.00            |
| <b>Total Monetary Award</b>   | <b>\$3,991.79</b> |

The landlords' application to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order, is withdrawn.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, with respect to February 2015 rent, is dismissed with leave to reapply.

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: February 3, 2015

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Residential Tenancy Branch



