



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, OPC, MNR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord an Order of Possession for unpaid rent and utilities, and for cause. The Landlord also applied for a Monetary Order for unpaid rent and utilities.

The Landlord appeared for the hearing with his daughter who acted as the Landlord’s agent and translator for the hearing. The Tenant appeared for the hearing three minutes late and the introductions and instructions for the hearing were recapped with the Tenant. The parties provided affirmed testimony during the hearing.

The Tenant confirmed receipt of the Landlord’s Application and documentary evidence prior to the hearing by personal service. The Tenant did not provide evidence prior to the hearing. The hearing process was explained and no questions about the proceedings were raised. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Preliminary Matters

The Landlord’s agent explained that they would like to retain the Tenant’s security deposit and recover the filing fee as part of their monetary claim. As both of these amounts can be considered by me under Section 72 of the Act, I amended the Landlord’s Application in order to deal with these requests during the hearing, pursuant to my authority under Section 64(3) (c) of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent for March and April 2015?

- Is the Landlord entitled to unpaid utilities?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

### Background and Evidence

Both parties agreed that this month to month tenancy for a self-contained basement suite started in April, 2014. No written tenancy agreement was completed but rent for the unit was established in the amount of \$900.00 payable on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$450.00 at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenant failed to pay rent on March 1, 2015 in the amount of \$900.00. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenant's door on March 3, 2015.

The Notice was provided into written evidence and had a vacancy date of March 13, 2015 due to unpaid rent in the amount of \$900.00 due on March 1, 2015, and unpaid utilities in the amount of \$280.99. The Landlord's agent testified that the Tenant had also failed to pay rent for April, 2015. As a result, the Landlord now seeks to recover from the Tenant \$1,800.00 in unpaid rent and \$300.00 for unpaid utilities.

The Tenant confirmed receipt of the Notice one week after it was posted on his door. The Tenant confirmed that he did not pay rent to the Landlord for March and April 2015 as he did not have the funds.

In relation to the unpaid utilities, the Tenant testified that there was no written agreement between the parties that he was required to pay utilities and what utilities the amount being claimed by the Landlord comprised of, and what proportion he was responsible for. The Tenant acknowledged that he had received demand letters from the Landlord regarding unpaid utilities but that the amounts being sought by the Landlord were excessive. The Tenant also submitted that the Landlord had provided no utility bills to verify the individual amounts they were claiming for all of the individual months they had calculated.

The Landlord testified that she had submitted a letter she had received into written evidence which stated that the Tenant was prepared to pay his outstanding rent and utilities and that this was evidence that the Tenant was responsible for utilities.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the Notice provided into written evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on March 3, 2015 in accordance with Section 88(g) of the Act.

The Tenant testified that he did not receive the Notice until a week after it was attached on his door. However, Section 90(c) of the Act provides that a document served by attaching to the door is deemed to have been received three days after being attached. Therefore, I find that the Tenant was deemed to have received the Notice on March 6, 2015 and the effective vacancy date is corrected to March 16, 2015 pursuant to Section 53 of the Act.

As explained and outlined in the Notice, the Tenant would have had until March 11, 2015 to pay the outstanding rent on the Notice or make an Application to dispute the Notice, or was required to move out of the rental unit by March 16, 2015. However, I accept the Tenant has not paid the outstanding rent, did not make an Application to dispute the Notice, and continues to occupy the rental unit.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenant has failed to pay rent for April, 2015, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant.

This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. As the tenancy has been ended through the notice to end tenancy for unpaid rent, I did not examine or make findings on the notice to end tenancy for cause as this is now a moot issue.

The Landlord is also awarded the unpaid rent for the months of March and April 2015 in the amount of **\$1,800.00**. However, in relation to the Landlord's claim for unpaid utilities in the amount of \$300.00, I dismiss this portion of the claim for the following reasons. There is no written agreement that exists between the parties that the Tenant is responsible for paying utilities. Furthermore, it is not specified which utilities the Tenant is responsible for and what proportion he was to pay and how this payment was to be made. In addition, the Landlord failed to provide sufficient evidence to verify the \$300.00 amount being claimed through utility bills related to each individual month being claimed.

As the Landlord has been successful in proving unpaid rent, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,850.00** (\$900.00 + \$900.00 + \$50.00).

As the Landlord already holds the Tenant's **\$450.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. The Landlord is issued with a Monetary Order for the outstanding balance of **\$1,400.00** (\$1,850.00 - \$450.00). This order must be served on the Tenant and may then be filed in the Small Claims Court and enforced as an order of that court.

### Conclusion

The Landlord is granted an Order of Possession. The Tenant has breached the Act by not paying rent. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of rent in the amount of \$1,400.00. The Landlord's Application for unpaid utilities is dismissed.

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: April 22, 2015

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Residential Tenancy Branch

