



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with a landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord P.P. (the "landlord"), the nephew of the landlord and a friend of the landlord appeared at the teleconference hearing. The landlord gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant 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 were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on October 14, 2016 and was addressed to the name of the tenant and the rental unit address. The landlord testified that the tenant continues to occupy the rental unit. A registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference.

According the online registered mail tracking website, the registered mail package was marked "unclaimed" and returned to the sender. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find the tenant was duly served with the Notice of Hearing, Application and documentary evidence on October 19, 2016 which is five days after the registered mail package was mailed.

### Preliminary and Procedural Matter

During the hearing, the landlord requested amend his Application to include the unpaid utilities since the date he filed his Application. As I find the tenancy agreement clearly indicates that the tenant is responsible for 65% of the gas and hydro utilities, that I find the tenant would know or ought to know that the utility payments are required. Therefore, pursuant to section 64(3) of the *Act* I have amended the landlord's Application accordingly.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2015. Monthly rent in the amount of \$1,350.00 plus 65% of the gas and electricity utilities was due on the first day of each month. The tenant paid a security deposit of \$675.00 at the start of the tenancy which the landlord continues to hold and has accrued \$0.00 in interest

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated September 26, 2016 (the "10 Day Notice") by posting to the tenant's door. The 10 Day Notice included an effective vacancy date of October 6, 2016 and indicated that \$783.22 in utilities was owed by the tenant and that a demand for payment was dated July 6, 2016. The landlord testified that the tenant did not dispute the 10 Day Notice and did not pay the full amount of utilities owed within five days of receiving the 10 Day Notice.

The landlord stated that on October 4, 2016, the tenant paid \$510.00 towards the unpaid utilities and as of the date of the hearing on November 30, 2016 the tenant now owes a total of \$536.68 in unpaid utilities. The landlord stated that he would prefer to offset the money owed by the tenant from the tenant's security deposit if he is entitled to do so under the *Act*.

The landlord submitted documentary evidence including the tenancy agreement, 10 Day Notice, and utility bills in evidence.

### Analysis

Based on the undisputed documentary evidence and undisputed oral testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the full amount of utilities owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice is listed as October 6, 2016 which automatically corrects under section 53 of the *Act* to October 9, 2016 as documents served by posting to the tenant's door are deemed served three days after they are posted under section 90 of the *Act*. Based on the above, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was October 9, 2016. The tenant continues to occupy the rental unit according to the landlord.

Therefore, pursuant to section 55 of the *Act* **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on October 9, 2016 and that the tenant has been over-holding the rental unit since that date.

**Claim for unpaid utilities** – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenant. The landlord testified that \$536.68 in unpaid utilities is owed by the tenant as of the date of the hearing. Based on the above and taking into account section 46(6) of the *Act* that provides that unpaid utility charges may be treated as unpaid rent under the *Act* if the amount unpaid is over 30 days after the written demand for payment, I find that the landlord has met the burden of proof and is owed **\$536.68** in unpaid utilities as of the date of the hearing.

The landlord is holding a security deposit of \$675.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy. As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**.

**Monetary claim** – I find that the landlord has established a total monetary claim of **\$636.68** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Utility arrears owing by tenant	\$536.68
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$636.68</b>
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-\$675.00</i>
<b>NEW BALANCE OF TENANT'S SECURITY DEPOSIT</b>	<b>\$38.32</b>

I authorize the landlord to retain **\$636.68** of the tenant's \$675.00 security deposit in full satisfaction of the landlord's monetary claim pursuant to section 72 of the *Act*. Given the above, I find the tenant's new security deposit balance being held by the landlord is \$38.32.

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on October 9, 2016.

The landlord has established a total monetary claim of \$636.68 as indicated above. The landlord has been authorized to retain \$636.68 of the tenant's \$675.00 security deposit in full satisfaction of the landlord's monetary claim pursuant to section 72 of the *Act*. The tenant's new security deposit balance being held by the landlord is \$38.32.

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: November 30, 2016

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Residential Tenancy Branch