



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain 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, pursuant to section 72 .

The landlord's agent, DD ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's Application and evidence.

DD testified that the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenants by posting it on the door on November 10, 2016, with an effective date of November 20, 2016. The tenants testified that they had no issue with the service of the 10 Day Notice. I find the tenants were duly served with the 10 Day Notice in accordance with section 88 of the *Act*.

The landlord's agent confirmed during the hearing they were seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, late fees, and parking fees, and recovery of the filing fee. The landlord is applying to retain the security

deposit in partial satisfaction of the outstanding rent. The landlord indicated in their application that they were seeking compensation for damage to the unit, site, or property. This part of the landlord's application is withdrawn as the landlord is only seeking the above compensation.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent, parking fees, and late fees?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

The landlord testified regarding the following facts. This fixed term tenancy began in April 2016 with monthly rent currently set at \$1,415.00, which is payable on the first day of each month. A security deposit of \$707.50 was paid by the tenants and the landlord continues to retain this deposit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of November 20, 2016. The tenants continue to reside at the unit, although the landlord testified that the tenants have only paid portions of rent, and owe an outstanding balance of \$3,255.00 for unpaid rent, late fees, and parking for the months of November 2016 through to January 2017. The landlord seeks a monetary order of \$2,647.50 which includes the \$1,415 rent owing for November 2016 and January 2017, the \$1,215.00 rent owing for December 2016, the \$25 late fees and \$45 parking fees for November 2016 to January 2017, the \$100.00 filing fee, minus the \$1,000.00 that was paid by the tenants in January 2017 (for use and occupancy only), minus the \$707.50 security deposit still held by the landlord. The landlord submitted that even after the 10 day Notice was served to the tenants in November, the tenants have only made partial payments towards the outstanding rent.

The tenants testified that they are not disputing any of the landlord's testimony in regards to the unpaid rent and fees. They explained that their father had recently suffered a stroke, and they are having difficulty making payments. They testified that

they will comply with the Order of Possession, and simply want until the end of January 2017 to move.

### Analysis

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord and the tenants, and the supporting documents respecting matters of rent, I find that the tenants were served with a notice to end tenancy for non-payment of rent and I find the notice to be valid.

The tenants failed to pay the full rent due on November 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 23, 2016, the corrected effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by November 23, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

The tenants did not dispute the fact that they have only made partial payments towards the rent, parking fees, and late fees for the months of October 2016 to January 2017. I find that the landlord is entitled to \$3,255.00 in unpaid rent and fees.

The landlord continues to hold the tenants' security deposit of \$707.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$707.50 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

### Conclusion

I find that the landlord's 10 day notice is valid and effective as of November 23, 2016.

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

I order the landlord to retain the tenants' security deposit of \$707.50 in partial satisfaction of the monetary claim.

As the landlord was successful in this application, I find that they are entitled to recover the \$100.00 filing fee.

I issue a \$2,647.50 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, parking and late fees, plus the filing fee, and also allows the landlord to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for November 2016	\$1,415.00
Late Fee for November 2016	25.00
Parking Fee for November 2016	45.00
Unpaid Rent for December 2016	1,215.00
Late Fee for December 2016	25.00
Parking Fee for December 2016	45.00
Unpaid Rent for January 2017	1,415.00
Late Fee for January 2017	25.00
Parking Fee for January 2017	45.00
Less Security Deposit	-707.50
Less Monies Paid January 2017	-1000.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,647.50</b>

The tenants must be served with this Order as soon as possible. Should the tenants 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.

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 27, 2017

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Residential Tenancy Branch