



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR

### Introduction

This participatory hearing was convened after the issuance of an August 25, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord.

The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and

The tenants did not attend this hearing, although I waited until 11:13 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. M.N. (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord provided written evidence that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to each tenant by way of registered mail on August 23, 2017. The landlord provided a copy of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on August 28, 2017, the fifth day after its registered mailing.

On August 30, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution (the amendment) to provide a legible copy of their 10 Day Notice to End a Tenancy for Unpaid Rent (the 10 Day Notice). I find that this amendment does not change the details of the landlord's claim.

The landlord testified that the amendment and the notice of this adjourned hearing were sent to each tenant by way of registered mail on September 02, 2017. The landlord provided a copy of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the amendment and the notice of this adjourned hearing on September 07, 2017, the fifth day after its registered mailing.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice was personally served to Tenant M.H. at 9:00 a.m. on August 01, 2017. In accordance with section 88 of the *Act* I find that the 10 Day Notice, identifying \$1,000.00 in unpaid rent and \$334.68 in unpaid utilities owing for this tenancy, was duly served to the tenants.

At the outset of the hearing the landlord testified that the tenants are still in the rental unit and have not made any payments towards the tenancy. The landlord requested to amend their application for a monetary award from \$1,334.68, to \$3,474.00, to reflect the tenants' failure to pay \$1,000.00 in monthly rent for September 2017 and October 2017, as well as the unpaid utilities in the amount of \$139.92 for the period of February 15, 2017 to March 10, 2017. I allowed this amendment to the landlord's monetary application as it is clear that the tenant would have known that rent and utilities for the rental unit had become owing since the landlord submitted this application for dispute resolution.

The landlord's amended application for a monetary award of \$3,476.52 is for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid Utilities for billing period of June 16, 2016, to October 15, 2016	\$213.09
Unpaid Utilities for billing period of October 16, 2016, to February 15, 2017	123.91
Unpaid Utilities for billing period of February 16, 2016, to June 15, 2017	139.52
Unpaid August 2017 Rent	1,000.00
Unpaid September 2017 Rent	1,000.00
Unpaid October 2017 Rent	1,000.00
<b>Amended Requested Monetary Order</b>	<b>\$3,476.52</b>

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

### Background and Evidence

The landlord gave written evidence that this tenancy began on October 01, 2016, with a monthly rent of \$1,000.00 that is due on the last day of each month. The tenancy agreement indicates that the tenants are responsible for 1/3 of the utilities for the portion of the house that they are renting. The landlord testified that the security deposit was already given back to the tenants.

A copy of the signed 10 Day Notice, dated August 01, 2017, with an effective date of August 11, 2017, was included in the landlord's evidence.

A copy of a tenant ledger showing the rent owing and paid during this tenancy was also included in the landlord's evidence.

The landlord also included copies of the utility bills for each of the three billing periods that the landlord is seeking to recover payment for:

- June 16, 2016 – October 15, 2016 = \$639.27
- October 16, 2016 – February 15, 2017 = \$371.72
- February 16, 2017 – June 15, 2017 = \$418.57

### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed evidence and sworn testimony, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make 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 August 11, 2017, the effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by August 11, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the utility bill for the period of June 16, 2016, to October 15, 2016, is for a period of time that the tenants were not in the unit as this tenancy only began on October 01, 2016. I find that the tenants are only responsible for the period of time that they were in the rental unit, from October 01, 2016, to October 15, 2016, a total of 15 days which amounts to \$26.25 at \$1.75 per day ( $\$639.27 / 3 = \$213.09 / 122 \text{ Days}$  (June 16 – October 15 is 122 days) = \$1.75 per day).

I further find the landlord is entitled to a monetary award of \$123.91 for unpaid utilities for the period of October 16, 2016 to February 15, 2017 ( $\$371.72 / 3 = \$123.91$ ) and \$139.52 for the period of February 16, 2017 to June 15, 2017 ( $\$418.57 / 3 = \$139.52$ ).

Based on the landlord's undisputed written evidence and sworn testimony, I find the landlord is entitled to a monetary award of \$3,289.68 for unpaid rent owing for this tenancy for the period from August 2017 to October 2017 and unpaid utilities for the period from October 01, 2016 to June 15, 2017.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants or any occupant 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to recover unpaid utilities from the tenant:

<b>Item</b>	<b>Amount</b>
Unpaid Utilities for billing period of October 01, 2016, to October 15, 2016	\$26.25
Unpaid Utilities for billing period of October 16, 2016, to February 15, 2017	123.91
Unpaid Utilities for billing period of February 16, 2016, to June 15, 2017	139.52
Unpaid August 2017 Rent	1,000.00
Unpaid September 2017 Rent	1,000.00
Unpaid October 2017 Rent	1,000.00
<b>Total Monetary Order</b>	<b>\$3,289.68</b>

The landlord is provided with this Order in the above 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 Orders 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: October 04, 2017

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**Residential Tenancy Branch**