



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF BURNABY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, OPN, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 5, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order to retain the security deposit;
- an order of possession in relation to the Tenants' notice to end tenancy; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 am on April 25, 2019 as a teleconference hearing. The Landlord's Agents B.T. and M.C. appeared for the Landlord. No one appeared for the Tenants. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that B.T., M.C., and I were the only persons who had called into this teleconference.

B.T. testified that the Application and documentary evidence package was served to the Tenants by registered mail on March 8, 2019. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Landlord and his Agent, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on March 13, 2019, the fifth day after the registered mailing. The Tenants did not submit documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the start of the hearing, B.T. testified that the Tenants moved out of the rental unit on March 19, 2019. As such, the Landlord is no longer seeking an order of possession and wished to withdraw the claim for an order of possession relating to the Tenants notice to end tenancy dated February 6, 2019.

### Issue(s) to be Decided

1. Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?
2. Should the Landlord be authorized to apply the security deposit to the monetary claim, in accordance with Section 72 of the Act?
3. Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

B.T. testified that the tenancy began on December 1, 2009. Rent in the amount of \$1,865.00 was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$825.00 which the Landlord continues to hold. B.T. stated that the tenancy ended on March 19, 2019 after the Tenants moved out of the rental unit.

B.T testified that the Tenants failed to pay rent when due during;

<b>Unpaid Rent Months</b>	<b>Amount</b>
October 2018	\$1,865.00
December 2018	\$1,865.00
January 2019	\$1,865.00
February 2019	\$1,865.00
March 2019	\$1,865.00

B.T. stated that the Tenants provided the Landlord with written notice to end tenancy dated February 6, 2019. The Tenant's notice indicated that the Tenants intended on vacating their rental unit on February 28, 2019. The notice also indicated that the Tenants consented to the Landlord retaining their security deposit as a partial payment towards the outstanding balance of unpaid rent owed to the Landlord. The Landlord submitted a copy of the notice in support.

B.T. testified that the Tenants occupied the rental unit up until March 19, 2019 and have not paid any amount towards the unpaid rent owing. The Landlord is seeking to retain the security deposit in partial satisfaction of their claim.

If successful, the Landlord is also seeking repayment for the filing fee in relation to the Application. As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

Section 26 of the Act explains that the Tenants 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 Tenants have a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenants had a right under this Act to deduct any of their rent, I find that the Tenants are in breach of Section 26 of the Act.

Section 45(1) of the Act authorizes Tenants to end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, B.T. testified and provided documentary evidence to support that the Tenants provided the Landlord with written notice to end their tenancy on February 6, 2019, with an effective vacancy date of February 28, 2019. Incorrect effective dates of notices to end tenancy automatically change to the correct date, under section 53 of the Act.

I find that the notice to end tenancy, provided by the Tenants to the Landlord should have the incorrect effective date of February 28, 2019 corrected to March 31, 2019 and, therefore, I find the Tenants are responsible for paying the full amount of rent for March 2019, despite the fact that they moved out of the rental unit on March 19, 2019.

B.T. testified that the Tenants have not yet provided the Landlord with their forwarding address after moving out of the rental unit.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$9,325.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$8,600.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$9,325.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$825.00)
<b>TOTAL:</b>	<b>\$8,600.00</b>

### Conclusion

I find that the Tenants have breached the Act by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$8,600.00. This order must be served on the Tenants as soon as possible. If the Tenants fail to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 25, 2019

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Residential Tenancy Branch