



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant CN (the tenant) and the landlord attended the hearing. The 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 landlord testified that he personally served the tenants with the dispute resolution package on 7 December 2014. The tenant did not dispute service of the dispute resolution package. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

### Preliminary Issue – Tenant's Adjournment Request

At the commencement of the hearing, the tenant requested an adjournment as he was required to work today. The landlord did not consent to an adjournment.

The tenant stated that he attempted to call the Residential Tenancy Branch to request an adjournment, but that he could not get through.

*Residential Tenancy Branch, Rules of Procedure*, rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would commence as scheduled. Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the tenant had ample notice of the hearing, I did not find evidence the tenant's evidence that he contacted the Residential Tenancy Branch to be sufficient, and it would unfairly prejudice the landlord to reschedule the hearing.

In any event, the tenant was able to remain connected to the hearing until its conclusion.

#### Issue(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? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim my findings around it are set out below.

This tenancy began approximately 1.5 years ago. Monthly rent of \$1,100.00 is due on the first. There is no written tenancy agreement. No security deposit was collected at the beginning of the tenancy.

The landlord testified that he served the tenants with the 10 Day Notice on 26 October 2014 by posting the notice to the tenants' door. I am satisfied that the tenants were served with the 10 Day Notice pursuant to sections 88 and 90 of the Act. The 10 Day Notice was dated 26 October 2014 and set out an effective date of 8 November 2014. The 10 Day Notice was given for \$3,300.00 in rent arrears that were due on 1 October 2014.

The landlord testifies that the tenants have \$5,500.00 in rental arrears:

| Item                      | Amount            |
|---------------------------|-------------------|
| July Rent                 | \$1,100.00        |
| Rent Payment              | -800.00           |
| August Rent               | 1,100.00          |
| Rent Payment              | -300.00           |
| September Rent            | 1,100.00          |
| October Rent              | 1,100.00          |
| November Rent             | 1,100.00          |
| December Rent             | 1,100.00          |
| <b>Total Rent Arrears</b> | <b>\$5,500.00</b> |

The tenant did not dispute the landlord's calculation. The tenant provided evidence of what he says constitutes breaches of the Act.

The landlord testified that the tenants have not provided any receipts for emergency repairs and that there is no order of the Residential Tenancy Branch that permits the tenants not to pay rent.

To avoid paying an increased filing fee, the landlord elected to cap his claim at \$5,000.00.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of

the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by 8 November 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and agreed to testimony that the tenants have unpaid rental arrears totaling \$5,500.00. I find that the landlord has proven the rent arrears.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

The landlord is given a formal order of possession which must be served on the tenant(s). If the tenant(s) do(es) not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$5,050.00 under the following terms:

| Item  | Amount            |
|---|-------------------|
| Unpaid Rent Arrears                         | \$5,000.00        |
| Recovery of Filing Fee for this Application | 50.00             |
| <b>Total Monetary Order</b>                 | <b>\$5,050.00</b> |

The landlord is provided with these orders 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 these orders, these orders 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 subsection 9.1(1) of the Act.

Dated: January 09, 2015

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Residential Tenancy Branch

