



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** FF MNR OPR

### 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 the filing fee for this application, pursuant to section 72

While the landlord's agent attended the hearing by way of conference call, the tenants did not. I waited until 9:15 a.m. to enable the tenants to participate in this scheduled hearing for 9:00 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on November 28, 2016, by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on December 3, 2016, five days after its registered mailing.

The landlord's agent testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2016 ("10 Day

Notice”), on November 2, 2016, by way of posting to the rental unit door. Proof of service was provided in the landlord’s evidence package, signed by a witness on November 2, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord’s 10 Day Notice on November 5, 2016, three days after its posting.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and losses pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

### **Background and Evidence**

The landlord’s agent testified regarding the following facts. This is a month-to-month tenancy with monthly rent in the amount of \$1,090 payable on the first day of each month. The landlord holds a security deposit in the amount of \$399.00. The tenants continue to reside in the rental unit. The landlord is seeking an Order of Possession with a possession date of December 31, 2016.

The landlord issued the 10 Day Notice, indicating an effective move-out date of December 13, 2016. The notice states that the tenants failed to pay rent in the amount of \$1,415.00, which was the outstanding rent for October and November 2016. The landlord’s agent testified that since the Notice was served, the tenants have paid \$600.00 towards the outstanding rent, but the tenants have not paid any rent for the month of December 2016. The landlord seeks a monetary order of \$1,905.00 for the above period as well as recovery of the \$100.00 filing fee.

### **Analysis**

The landlord’s agent provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on November 10, 2016, within five days of being deemed to have received the 10 Day Notice. The tenants did not make 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 tenants to take either of the above actions within five days led to the end of this

tenancy on December 13, 2016, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 13, 2016. As this has not occurred, I find that the landlord is entitled to an Order of Possession with a possession date of December 31, 2016, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The landlord's agent provided undisputed evidence that the tenants failed to pay outstanding rent in the amount of \$1,305.00. Therefore, I find that the landlord is entitled to \$1,305.00 in rental arrears for the above period.

The landlord continues to hold the tenants' security deposit of \$399.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 and the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$399.00 in partial satisfaction of the monetary claim.

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

### **Conclusion**

I grant an Order of Possession to the landlord with a possession date of **December 31, 2016**. Should the tenants or anyone 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.

I order the landlord to retain the tenants' security deposit of \$399.00 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlord's favour in the amount of \$1,006.00 against the tenants for the following items:

<b>Item</b>	<b>Amount</b>
Rental Arrears for October 2016	\$325.00
Rental Arrears for November 2016	490.00
Rental Arrears for December 2016	1,090.00
Less rent paid by the tenant November 8, 2016	-600.00

Less Security Deposit	-399.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$1,006.00</b>

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 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: December 19, 2016

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Residential Tenancy Branch