



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

Dispute Codes      OPRM-DR, FFL, CNR

### Introduction

On April 30, 2018, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) issued a decision regarding the landlord's direct request application 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
- authorization to recover the filing fee for the application from the tenants pursuant to section 72.

In that uncontested ex parte hearing, the adjudicator issued the landlord a two-day Order of Possession and a monetary Order in the amount of \$3,335.00.

On May 16, 2018, an arbitrator appointed pursuant to the *Act* considered the tenants' review consideration application. In that application, the tenants correctly noted that they had submitted an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) within the required time frame for doing so pursuant to section 46 of the *Act*. Although a hearing had been scheduled for May 10, 2018 to consider the tenants' application, the Residential Tenancy Branch failed to halt combine the landlord's application for an Order of Possession and a monetary award based on the 10 Day Notice with the tenants' application. As this appeared to have been an oversight, the arbitrator suspended the decision, Order of Possession and monetary Order granted to the landlord by the adjudicator pending the outcome of a reconvened hearing of the landlord's application and the consideration of the tenants' application. I have been delegated responsibility for considering the applications from both the landlord and the tenants.

Both parties attended the current hearing and 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.

At the commencement of the hearing, Tenant SRJO (the tenant) confirmed that on April 10, 2018, the tenants received the landlord's 10 Day Notice. The landlord provided witnessed written evidence supported by sworn testimony that 10 Day Notices were posted on the tenants' front and back doors on April 8, 2018. I am satisfied that these Notices were duly served to the tenants in accordance with section 88 of the *Act*.

The landlord's agent (the landlord) testified that they sent both tenants copies of the original dispute resolution hearing package by registered mail on April 29, 2018. Although the tenant maintained that the tenants never received these notices, they did confirm that they were aware of the landlord's application once they received the adjudicator's April 30, 2018 decision. The tenant also confirmed that once they received the arbitrator's Review Consideration Decision, they served a copy of that decision, their application and the Notice of Hearing for the reconvened hearing to the landlord. The landlord confirmed receipt of these documents. Both parties confirmed that they had sent and received one another's written evidence packages. Based on the above information, I find that both of the parties were duly served with all of the above documents in accordance with sections 88 and 89 of the *Act*.

At the commencement of this hearing, the landlord asked for permission to add another two months of unpaid rent to the \$3,235.00 identified in the landlord's original application for a monetary award. As the tenants clearly knew that additional rent had become owing since the landlord applied for dispute resolution, I allowed the landlord to increase the amount of the requested monetary award to a total of \$5,710.00, an amount which also included recovery of the landlord's filing fee.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? 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

This one year fixed term tenancy commencing on June 1, 2017, was scheduled to end on June 1, 2018. Monthly rent is set at \$1,650.00, payable in advance on the first of

each month. The landlord continues to hold the tenants' \$825.00 security deposit paid when this tenancy began.

The landlord's 10 Day Notice identified \$3,835.00 in unpaid rent owing as of April 7, 2018. Subsequent to the landlord issuing the 10 Day Notice, the landlord realized that there had been a \$600.00 payment made towards this tenancy, which had not been deducted from the amount identified as owing. The landlord said that the correct amount on the 10 Day Notice should have been \$3,235.00.

The effective date noted on the 10 Day Notice was April 8, 2018. This date automatically corrects to April 21, 2018, the earliest possible date that a 10 Day Notice posted on the tenant's door on April 8, could have taken effect.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2018, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.
2. The tenants agreed to pay \$2,000.00 in cash to a member of the landlord's family at the landlord's home at or about 8:00 p.m. on June 19, 2018.
3. The tenants agreed to pay \$2,450.00 to the landlord (or the landlord's father, his agent at this hearing) by 8:00 p.m. on June 30, 2018.
4. Both parties agreed that the landlord will be allowed to retain the tenants' security deposit for this tenancy.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of both applications and all issues currently in dispute arising out of this tenancy at this time and that they did so of their own free will and without any element of force or coercion.

### Conclusion

The previous decision and Orders of April 30, 2018, are set aside and have no continuing force nor effect. These are replaced by the following :

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used only by the landlord if the tenants do not vacate the rental premises by 1:00 p.m. on June 30, 2018, in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$4,450.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenant(s) do not abide by the terms of the above settlement.

To give effect to the settlement reached between the parties, I order the landlord to retain the \$825.00 security deposit in place for this tenancy.

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: June 18, 2018

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Residential Tenancy Branch