



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, FFL, CNR, ERP, RP, LAT, RR, FFT

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- an Order for emergency repairs, pursuant to section 62;
- authorization to change the locks, pursuant to section 31;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to sections 26, 46 and 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlords testified that they served each tenant separate notice of dispute resolution packages by registered mail on June 14, 2018. The tenants confirmed receipt of these dispute resolution packages on June 19, 2018. I find that the tenants were served with these packages on June 19, 2018, in accordance with section 89 of the *Act*.

The tenants testified that they personally served the landlords with one notice of dispute resolution package on June 8, 2018. The landlords confirmed receipt of this dispute resolution package on June 8, 2018. While only one notice of dispute resolution

package was served, contrary to Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”), the landlords both testified that they each had the opportunity to review and respond to the information contained in the package. As such, and pursuant to section 71 of the *Act*, I find that the notice of dispute resolution package was sufficiently served on both landlords for the purposes of this *Act*.

*Rule 2.3* states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the cancellation of the 10 Day Notice to End Tenancy for unpaid rent (the “10 Day Notice”) and the continuation of this tenancy are not sufficiently related to any of the tenants’ other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants’ other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants’ claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

On the landlord’s dispute resolution application, the name of one of the landlords was omitted and the first name of one of the tenants was missing. Given that all parties were in attendance and confirmed the correct spelling of their names, I amended the dispute resolution application to include both of the landlords and the correct names of the tenants, pursuant to section 64 of the *Act*.

#### Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice, pursuant to section 46 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Are the landlords entitled to an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
4. Are the landlords entitled to a monetary order for unpaid rent, pursuant to sections 26, 46 and 67 of the *Act*?

5. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for these applications.

Both parties agreed that the tenants only paid \$800.00 on June 1, 2018 and have not paid any rent since that date. Landlord P.F. testified that on June 2, 2018, he served a 10 Day Notice to End Tenancy for unpaid rent with an effective date of June 11, 2018 on tenant Y.D.F. Tenant Y.D.F. testified that he received the 10 Day Notice in person on June 2, 2018.

The tenants testified that they stopped paying rent because the landlord had failed to make the repairs they had requested in the rental property.

The tenants applied for dispute resolution on June 8, 2018 and the landlords applied for dispute resolution on June 8, 2018.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. I accept the evidence of both parties that landlord P.F. personally served tenant Y.D.F. with the 10 Day Notice on June 2, 2018. I find that service of the 10 Day Notice was effected on tenant Y.D.F. on June 2, 2018.

The tenants failed to pay the remainder of June 2018's rent, that being \$500.00, within five days of receiving the 10 Day Notice. The tenants failed to file their application for dispute resolution, pursuant to section 46(4) of the *Act*, within five days of receiving the

10 Day Notice: the tenants' application was made 6 days after receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice. Section 53 of the *Act* allows a notice to end tenancy that has an incorrect effective date to self-correct to the correct date. In this case the corrected effective date is June 12, 2018.

In this case, this required the tenants to vacate the premises by June 12, 2018. As that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,300.00 on June 1, 2018 which they failed to do. The alleged failure of the landlords to repair and maintain the property does not relieve the tenants of their obligation under section 26(1) of the *Act*. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$500.00 for the month of June 2018 and \$1,300.00 for the month of July 2018, for a total of \$1,800.00 in unpaid rent.

As the landlords were successful in their application, I find that the landlords are entitled to recover the filing fee from the tenants in the amount of \$100.00.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$650.00 in part satisfaction of their monetary claim for unpaid rent against the tenants.

### Conclusion

I dismiss the tenants' application to cancel the 10 Day Notice and to recover the \$100.00 filing fee from the landlords, without leave to reapply.

I dismiss the remainder of the tenants' application with leave to reapply. Leave to reapply is not an extension of any limitation period.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. 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.

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
June rent	\$ 500.00
July rent	\$ 1,300.00
Filing Fee	\$ 100.00
Less security deposit	- \$ 650.00
<b>TOTAL</b>	<b>\$1,250.00</b>

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: July 27, 2018

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Residential Tenancy Branch