



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, FFL

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

The tenants did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord's property manager and assistant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's property manager (the landlord) indicated that she would be the primary speaker on behalf of the landlord.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

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

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent to each tenant by way of registered mail on June 20, 2018. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with their each Application and evidentiary package on June 20, 2018, the fifth day after their registered mailing.

The landlord gave undisputed affirmed testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the tenants' door on June 06, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served to the tenants on June 09, 2018.

#### Preliminary Matters

At the outset of the hearing the landlord requested to amend a spelling error for Tenant E.D.'s last name to match with the tenancy agreement. I have amended Tenant E.D.'s last name to reflect the tenancy agreement pursuant to section 64 of the *Act*.

Also at the outset of the hearing the landlord testified that the tenants are still in the rental unit and sought to reduce their monetary claim from \$7,627.00 to \$6,153.00 to reflect payments made towards the amount owing on the 10 Day Notice by the tenants and for the inclusion of August 2018 rent.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow this amendment to the Application as rent for August 2018 was clearly rent that the tenants would have known about and resulted since the landlord submitted their Application for Dispute Resolution and also in consideration that the tenants are not prejudiced by a reduced monetary claim.

#### Issues(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 tenants?

#### Background and Evidence

The landlord gave written evidence that this tenancy began on March 01, 2012, with a current monthly tenant rent contribution of \$2,826.00, effective from March 01, 2018 to February 28, 2019, that is due on the first day of each month. The landlord testified that no security deposit was paid towards this tenancy

A copy of the signed 10 Day Notice dated June 06, 2018, identifying \$6,801.00 in unpaid rent owing for this tenancy with an effective date of June 19, 2018, was included in the landlord's evidence.

The landlord testified that the tenants are still in the rental unit and have not paid the full amount owing on the 10 Day Notice within the five days provided for under the *Act*.

The landlord gave undisputed testimony that the tenants have paid \$2,000.00 on June 05, 2018, \$2,300.00 on June 30, 2018 and \$2,000.00 on July 31, 2018, for use and occupancy only, since the 10 Day Notice was issued to the tenants. The landlord submitted that they are seeking an Order of Possession and a monetary award of \$6,153.00 for the unpaid rent owing for June 2018, July 2018 and August 2018.

#### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed evidence and testimony, I find the tenants failed to pay the full amount owing on the 10 Day Notice within five days of receiving the 10 Day Notice and did not make an application within five days of receiving the 10 Day Notice pursuant to section 46(4) of the *Act*. Due to the failure of the tenants to take either of these actions within five days, I find the tenants are conclusively presumed to have accepted the end of this tenancy by June 19, 2018, the effective date on the 10 Day Notice pursuant to section 46(5) of the *Act*. In this case, the tenants and anyone on the premises were required to vacate the premises by June 19, 2018.

As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the landlord's undisputed written evidence and affirmed testimony, I find the landlord is entitled to a monetary award of \$6,153.00 for unpaid rent owing for June 2018, July 2018 and August 2018.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant 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.

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee for the Application:

Item	Amount
Unpaid June 2018 Rent	\$501.00
Unpaid July 2018 Rent	2,826.00
Unpaid August 2018 Rent	2,826.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$6,253.00</b>

The landlord is provided with this Order 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 this Order, this Order 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 16, 2018

---

Residential Tenancy Branch