



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNRL-S OPR FFL**

### **Introduction**

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The tenants did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

The landlord was given an opportunity to present testimony, call witnesses and submit evidence.

The landlord testified the tenants were individually served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on September 19, 2018. Under section 90, the documents are deemed received by the tenants five days later, on September 24, 2018. The landlord also testified he sent an evidentiary package to the tenants individually by registered mail on October 15, 2018. Under section 90, the documents are deemed received by the tenants five days later, on October 20, 2018.

The landlord provided the Canada Post tracking numbers in support of service referenced on the first page of the decision.

Pursuant to sections 89 and 90 of the *Act*, I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution on September 24, 2018.

At the beginning of the hearing, the landlord requested an amendment of his claim to include outstanding rent for the month of October 2018.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing 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. As the landlord's increased claim for outstanding rent in this case could be reasonably anticipated, I grant the landlord an amendment of the amount claimed to increase outstanding rent by an additional month's rent, \$775.00.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The landlord testified he entered into a month-to-month verbal tenancy agreement with the tenants commencing December 1, 2017 for rent of \$775.00 payable on the first of the month. The tenants provided a security deposit of \$350.00 at the start of the tenancy which the landlord holds. The tenants have not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord testified the tenants paid \$250.00 rent on September 1, 2018 and have not paid the balance of \$525.00. The tenants did not pay rent of \$775.00 due on October 1, 2018.

The landlord testified he personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Ten Day Notice), a copy of which was submitted in evidence, on September 8, 2018.

The Ten-Day Notice provides the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of September 18, 2018.

The landlord testified the tenants did not pay rent within the five-day period and did not make an application for dispute resolution.

The landlord testified rent is owing as follows:

ITEM	AMOUNT
Outstanding rent September 2018	\$525.00
Outstanding rent October 2018	\$775.00
<b>TOTAL</b>	<b>\$1,300.00</b>

The tenants continue to occupy the unit.

#### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenants were served with the Ten-Day Notice on September 8, 2018 in accordance with sections 88 of the *Act*.

I find the tenants did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice (September 18, 2018) requiring the tenants to vacate the rental unit by that date.

As the tenants continue to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$1,300.00.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order for **\$1,050.00** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$1,300.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$350.00)
<b>Monetary Order</b>	<b>\$1,050.00</b>

### Conclusion

I grant the landlord a monetary order in the amount of **\$1,050.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: October 30, 2018

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Residential Tenancy Branch