



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR FF

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

This application was originally heard by way of a Direct Request Proceeding and on July 27, 2018 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord's representative testified that on July 30, 2018, a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision was sent to each of the tenants named in the application by registered mail. The landlord provided registered mail receipts and tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Preliminary Issue – Naming of parties in Landlord's Application

The landlord's representative testified that only C.L. and K.L. were supposed to be the tenants subject to this tenancy. Both are named on the original tenancy agreement however K.L. did not end up signing the tenancy agreement. The landlord submitted a copy of the rental application signed by both C.L. and K.L. The landlord's representative testified that all four parties named in the application are adults and they all participated in the rental.

Based on the above evidence, I find that only C.L. and K.L. were the intended tenants subject to this tenancy agreement; therefore, any monetary order arising out of this application will be issued naming only tenants C.L. and K.L. as liable.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began in March 2011 with a current monthly rent of \$1600.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The landlord's representative testified that on July 3, 2018 she served the tenants with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord's monetary claim is for outstanding rent in the amount of \$1800.00. The landlord's representative testified that this includes unpaid rent as of the date of the application. The landlord's representative testified that the amount outstanding as per the 10 Day Notice was \$3400.00 but the tenants subsequently made a payment of \$1600.00 on July 3, 2018 leaving a balance of \$1800.00.

### Analysis

I am satisfied that the tenants were deemed served with the 10 Day Notice on July 6, 2018, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the “corrected” effective date of the 10 Day Notice, July 16, 2018.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord’s uncontested evidence and claim for outstanding rent of \$1800.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1900.00.

The landlord continues to hold a security deposit of \$750.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1150.00.

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) 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 the landlord a Monetary Order in the amount of \$1150.00. 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: September 18, 2018

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Residential Tenancy Branch