



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR FF DR CNR

### Introduction

This hearing dealt with the applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- an Order of possession for unpaid rent pursuant to section 46 of the *Act*;
- a monetary award for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a cancellation of their 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 of the *Act*.

Both the tenants and the landlords' representatives attended the hearing by way of conference call. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenants acknowledged receipt of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") after it was posted on their door on August 3, 2018. Pursuant to sections 89 & 90 of the *Act* the tenants are deemed served with the landlords' 10 Day Notice on August 6, 2018. The tenants confirmed receipt of the landlords' application for dispute and evidentiary package after it was given to them in person. I find the tenants were duly served in accordance with the *Act*.

The landlords confirmed receipt of the tenants' application for dispute after it was given to them in person. The tenants acknowledged providing no evidence to the landlords. I find the landlords were duly served with the tenants' application for dispute in accordance with the *Act*.

### Issue(s) to be Decided

Can the tenants cancel the landlords 10 Day Notice to End Tenancy? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award?

Can the landlords recover the filing fee?

### Background and Evidence

Testimony provided to the hearing by the landlords explained this tenancy began on July 1, 2018. Rent was \$850.00 per month and a security deposit of \$425.00 paid at the outset of the tenancy continues to be held by the landlords.

The landlords said they issued a 10 Day Notice on August 3, 2018 after the tenants failed to pay rent as it was due under the terms of their tenancy agreement. The landlords said no rent was paid at all for August 2018 and rent continues to be unpaid for September 2018.

The tenants acknowledged not paying rent for August or September 2018; however, they placed the blame for this non-payment on a shelter form from the government which was incorrectly submitted. The tenants said a second issue with the form prevented the tenants from accessing funding after another effort was made to submit the shelter allowance form that provided them with funding to pay rent.

### Analysis

At the hearing the tenants acknowledged they had failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on the effective date of August 6, 2018 and failed to dispute the notice within five days of receipt of this notice. While the tenants did ultimately disputed the 10 Day Notice, little evidence was presented at the hearing as to why this rent remained unpaid or why this notice was disputed beyond the five day allowable time limit pursuant to section 46 of the *Act*. In accordance with section 46(5) of the *Act*, the tenants' failure to pay rent has led to the end of this tenancy. No evidence was presented at the hearing demonstrating that the tenants had been granted an order from an arbitrator with the *Residential Tenancy Branch* that rent did not have to be paid. 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 landlords may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

During the hearing, the tenants acknowledged that rent was unpaid and did not dispute the landlords' testimony that rent was unpaid for August 2018. I therefore find that the landlords are entitled a monetary award under section 67 of the *Act* for August 2018.

Pursuant to section 72 of the *Act*, I allow the landlords under section 72 of the *Act* to retain the tenants' security deposit in partial satisfaction for August 2018 rent.

As the landlords were successful in their application, they may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the tenants.

### Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenants. The landlords are provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of \$525.00 in favour of the landlords as follows:

Item	Amount
Unpaid rent for August 2018	\$850.00
Less security deposit	(-425.00)
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$525.00</b>

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 28, 2018

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Residential Tenancy Branch