



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP - WEST COAST REALITY

## **DECISION**

**Dispute Codes:** CNR FFL OPRM-DR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlord’s agent CH, (“landlord”) attended the hearing by way of conference call, the tenants did not. I waited until 9:40 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**In the absence of any submissions from the tenants in this hearing, and as they failed to attend the scheduled hearing, I order the tenants' application dismissed without liberty to reapply.**

The landlord's agent gave sworn testimony that on October 27, 2018, both tenants were served with copies of the Application for Dispute Resolution hearing package ('Application') and evidence by way of registered mail. The landlord provided tracking numbers in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants were deemed served with copies of the landlord's application and evidence on November 1, 2018, five days after mailing. The landlord confirmed receipt of the tenants' Application and evidence. Accordingly, I find the landlord duly served with the tenants' Application and evidence in accordance with sections 88 and 89 of the *Act*.

The landlord provided undisputed testimony that the tenants were personally served with two 10 Day Notices by way of posting the notices on their door. The first 10 Day Notice was served on September 12, 2018, and the second 10 Day Notice was served on October 12, 2018. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed serviced with the notices on September 15, 2018 and October 15, 2018.

Although the landlords applied for a monetary Order of \$2,800.00 in their initial claim, since they applied another \$2,400.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$2,800.00 to \$5,200.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

## **Background and Evidence**

The landlord's agent gave undisputed testimony regarding the following facts. This month-to-month tenancy began on February 1, 2018 with monthly rent set at \$2,400.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$1,200.00. The tenants continue to reside in the rental unit.

The landlord issued the first 10 Day Notice on September 12, 2018 to the tenants as they only paid \$2,000.00 in rent for August 2018. The landlord issued a second 10 Day Notice on October 12, 2018 as the tenants failed to pay the rent for October 2018. The landlord testified that the tenants owe \$400.00 for August 2018, and the full \$2,400.00 rent for October 2018. The landlord's agent testified that the tenants' rent payment was to be paid by direct deposit for November 2018, but payment did not go through. The landlords provided bank documentation to show that the \$2,400.00 was not paid. The landlord is seeking an Order of Possession, as well as a Monetary Order for the unpaid rent.

## **Analysis**

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the two 10 Day Notices comply with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice posted on October 12, 2018. As the tenants have not moved out by October 25, 2018, I find that the landlord is entitled to a 2 day Order of Possession. The landlord 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** of the Act, in part, states as follows:

***Rules about payment and non-payment of rent***

**26 (1)** *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.*

The landlord provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$5,200.00. Therefore, I find that the landlord is entitled a monetary order for this unpaid rent.

The landlord continues to hold the tenants' security deposit in the amount of \$1,200.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenants.

**Conclusion**

I dismiss the tenants' entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants or anyone 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.

I issue a \$4,100.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, the filing fee, and also allows the landlord to retain the tenants' security deposit in satisfaction of the money owed:

Item	Amount
Unpaid Rent for August 2018	\$400.00
Unpaid Rent for October 2018	2,400.00
Unpaid Rent for November 2018	2,400.00

Recovery of Filing Fee	100.00
Less Security Deposit	-1,200.00
<b>Total Monetary Order</b>	<b>\$4,100.00</b>

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: November 27, 2018

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Residential Tenancy Branch