



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL OPRM-DR CNR OLC

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- 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 his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order that the landlord comply with legislation pursuant to section 62.

None of the tenants named in the landlord's application attended the hearing, including EG, the tenant who filed the tenant application (the tenant). The landlord was represented by his agent, NB (landlord) who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that she served the 10 Day Notice on the tenants on November 1, 2018, by attaching a copy on the tenants' door or other conspicuous place in the presence of a witness. In accordance with section 88 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on November 4, 2018, three days after posting to the door.

The landlord testified that she served the landlord's application for dispute resolution dated November 9, 2018 on the tenants by sending each tenant their own registered mail package on November 15, 2018. The landlord provided three Canada Post tracking numbers as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on November 20, 2018, five days after its mailing.

### Issue(s) to be Decided

Should the 10 Day Notice be set aside? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent as claimed?

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

Should the landlord be required to comply with the legislation?

### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began on or about November 1, 2017. The current rent is \$1,400.00 payable on the 1<sup>st</sup> of the month. A security deposit of \$700.00 was paid by the tenants at the start of the tenancy and is still held by the landlord.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$4,200.00, the amount sought in the 10 Day Notice. The amount of arrear for this tenancy is \$4,200.00 as at the date of the hearing.

### Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30am. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

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.

As I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenants were obligated to pay the \$1,400.00 monthly rent. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$4,200.00. I issue a monetary award in the landlord's favour for unpaid rent of \$4,200.00 as at December 18, 2018, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$700.00 in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **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 monetary order in the landlord's favour in the amount of \$3,600.00 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent August	\$1,400.00
Unpaid Rent September	\$1,400.00
Unpaid Rent October	\$1,400.00
Filing Fees	\$100.00
Less Security Deposit	-\$700.00
<b>Total Monetary Order</b>	<b>\$3,600.00</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: December 18, 2018

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Residential Tenancy Branch