



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR FFL CNR ERP LRE OLC

### Introduction

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

The landlord's application, reconvened from a Direct Request application, is 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 the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order restricting the landlord's right to access the rental unit pursuant to section 70;
- an order that the landlord perform emergency repairs pursuant to section 33; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing, which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The landlord 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 they served the 10 Day Notice of October 26, 2018 on the tenants personally on that date. Based on the landlord's testimony I find that the 10 Day Notice was duly served on the tenants on October 26, 2018 in accordance with section 88 of the Act.

The landlord testified that they served the tenants with a copy of the Interim Decision of December 10, 2018, evidence and Notice of Reconvened Hearing on December 19, 2018 by registered mail. The landlord provided 2 Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants were each deemed served with the hearing package on December 24, 2018, 5 days after mailing in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord said that additional rent has become due and owing since the application was filed. As I find that additional rent becoming due is reasonably foreseeable, in accordance with section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, I allow the landlord to increase the monetary claim from \$3,390.00 to \$10,150.00.

#### Issue(s) to be Decided

Are the tenants entitled to any of the relief sought in their application?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for their application from the tenants?

#### Background and Evidence

The landlord provided the following facts. This periodic tenancy began in October 2017. The monthly rent is \$1,690.00 payable on the first of each month. A security deposit of \$845.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay the full amount of rent and there was an arrear of \$3,390.00 when the 10 Day Notice of October 26, 2018 was issued. The tenants failed to make any rent payment since the 10 Day Notice was served. As at the date of the hearing, January 28, 2019, the amount of the rental arrear is \$10,150.00.

#### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. 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 tenants' 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.

Furthermore, section 46(5) of the *Act* sets out that if a tenant does not pay rent or file an application to dispute a 10 Day Notice within 5 days of receipt of the notice they are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I have found that the tenants were served with the 10 Day Notice on October 26, 2018. The tenants first filed their application to dispute the 10 Day Notice on December 17, 2018. The landlord gave evidence that the tenants did not make any payment against the arrears within the 5 days granted under the *Act* or at all.

As I have dismissed the tenants' 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 \$1,690.00 monthly rent. I accept the landlord's evidence that the total amount of arrears for this tenancy is \$10,150.00. I issue a monetary award in the landlord's favour for unpaid rent of \$10,150 as at January 28, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful the landlord is entitled to recover the filing fee for their 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 \$845.00 in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 \$9,405.00 under the following terms:

Item	Amount
Rental Arrears	\$10,150.00
Filing Fee	\$100.00
Less Security Deposit	-\$845.00
<b>Total Monetary Order</b>	<b>\$9,405.00</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: January 28, 2019

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Residential Tenancy Branch