



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, FFT, OPRM-DR, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On January 14, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlords to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On January 15, 2019, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing; however, there was no appearance by the Tenants during the 20-minute hearing. All in attendance provided a solemn affirmation.

The Landlords advised that they served each Tenant with the Notice of Hearing package and evidence by registered mail on January 16, 2019 (the registered mail tracking numbers are on the first page of this decision). Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were deemed to have received these packages five days after they were mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for the unpaid rent?
- Are the Landlords entitled to recover the filing fee?

### Background and Evidence

The Landlords stated that the tenancy started on October 1, 2018 and that they agreed to allow the Tenants to paint the house in lieu of half a month of October 2018 rent. The Tenants were expected to pay the balance of October 2018 rent on October 15, 2018, and then rent would be owed in full on the first day of each month. Rent was established at \$2,450.00 per month. The Landlords submitted into evidence a tenancy agreement confirming the details of the tenancy. A security deposit of \$1,225.00 and a pet damage deposit of \$75.00 were paid.

The Landlords advised that the Tenants did not pay December 2018, January 2019, or February 2019 rent. They stated that they served the Notice to the Tenants by hand on January 7, 2019 which indicated that \$4,900.00 was outstanding on January 1, 2019. The Notice indicated that the effective end date of the Notice was January 17, 2019.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the

Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants received the Notice on January 7, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Saturday January 12, 2019, the Tenants must have paid the rent in full by that date or made this Application by Monday January 14, 2019 at the latest. The undisputed evidence is that the Tenants made their Application on January 14, 2019.

However, there is no evidence before me that permitted the Tenants to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being served the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlords are entitled to a monetary award and I grant the Landlords a Monetary Order in the amount of **\$7,350.00**, which is comprised of rent owed for the months of December 2018, and January and February 2019.

As the Tenants were unsuccessful in this application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlords**

Item	Amount
December 2018 – Outstanding rent	\$2,450.00
January 2019 – Outstanding rent	\$2,450.00

February 2019 – Outstanding rent	\$2,450.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$7,450.00</b>

### Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlords **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are provided with a Monetary Order in the amount of **\$7,450.00** in the above terms, and 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: February 12, 2019

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Residential Tenancy Branch