



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** FFL MNDL-S OPU

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for non-payment of rent or utilities 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 .

While the landlord HM and her agent HB ("landlord") attended the hearing by way of conference call, the tenant did not. The landlord and her agent were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on January 9, 2019 by way of registered mail. The landlords provided a Canada Post tracking their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on January 14, 2019, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on December 9, 2018, by posting the notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on December 12, 2018, three days after posting.

**Issue(s) to be Decided**

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?

Are the landlords entitled to monetary compensation for unpaid rent and losses?

Are the landlords entitled to recover their filing fee for this application?

**Background and Evidence**

The landlord testified regarding the following facts. This month-to-month tenancy began on or about August 2016. The tenant never signed a written tenancy agreement, although the landlord attempted to have the tenant sign on in November of 2018. Rent was originally set at \$1,550.00 at the beginning of the tenancy, payable on the first of every month. The landlords increased the rent to \$1,950.00 as of June 2018, which the landlord testified that the tenant agreed to verbally. No Notice of Rent Increase was ever issued. The landlords hold a security deposit in the amount of \$700.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued a 10 Day Notice to End Tenancy, dated December 9, 2018 as the tenant failed to pay any rent since October 2018. The landlord testified that the tenant paid the \$1,950.00 for June 2018, and only \$1,400.00 each for the months of July 2018 through to September 2018. The tenant has not paid any rent since the 10 Day Notice was issued to her. The landlord testified that the tenant also failed to pay for the utilities, and as a result the utility company shut off the hydro. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid rent in the amount of \$1,950.00.

**Analysis**

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 22, 2018, the corrected, effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 22, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

The landlord testified in the hearing that a rent increase was imposed in June of 2018, although a Notice of Rent Increase was not issued to the tenant. Although the tenant did not apply to dispute this rent increase I note that section 42 of the *Act* states the following about how a Notice of Rent Increase is to be given:

**Timing and notice of rent increases**

**42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

**(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.**

**(3) A notice of a rent increase must be in the approved form.**

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 26 of the *Act* requires that “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.” I find that it was undisputed that despite the fact that the landlords did not issue a Notice of Increase in accordance with the *Act*, the tenant still failed to pay rent as required by section 26 of the *Act*. As the tenant has not paid any rent since October 2018, I find that the landlords have suffered a loss of at least \$1,950.00 in unpaid rent for this tenancy. Accordingly, I allow the landlords’ monetary claim of \$1,950.00.

The landlords continue to hold the tenant’s security deposit of \$700.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant’s security deposit in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

**Conclusion**

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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 \$1,350.00 Monetary Order in favour of the landlords, which allows the landlords to recover the unpaid rent, the filing fee for this application, and also allows the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 14, 2019

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Residential Tenancy Branch