



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNDCL-S MNRL-S OPR CNR

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act (the “**Act**”).

The landlord applied for the following relief:

- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and late fees pursuant to section 67;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for the following relief:

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

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were personally served the notice of dispute resolution and supporting evidence on February 7, 2019. I find that the tenants were served with these documents in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Abandonment of Portion of Landlord's Claim

During the hearing, the landlord abandoned her claim for compensation in the amount of \$50.00 for the tenants' late payment of rent for two months. I accept this abandonment, and dismiss without leave to reapply the landlord's claim for compensation for loss in the amount of \$50.00 representing late fees owed by the tenant for late payment of rent.

Preliminary Issue – Amendment of Landlord's Claim

At the hearing the landlord sought to further amend her application to include a claim for February 2019 rent which she testified remains outstanding.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, as the landlord is seeking compensation for unpaid rent that has increased since she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of Act, I order that the landlord's claim be amended so as to include a claim for rent owing for February 2019. The landlord's claim for damages is now as follows:

	Outstanding Rent
September 1, 2018	\$200.00
December 1, 2018	\$100.00
January 1, 2019	\$900.00
February 1, 2019	\$900.00
<b>Total</b>	<b>\$2,100.00</b>

Issue(s) to be Decided

Is the landlord entitled to:

- to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested;
- an Order of Possession for non-payment of rent;
- a monetary order for unpaid rent;
- to recover her filing fee for this application from the tenant?

Are the tenants entitled to an order cancelling the Notice?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified that the tenants were served in person with a copy of the Notice on February 8, 2019. The effective date of the Notice was January 18, 2019. She testified that she had a video recording of this service (although it was not uploaded into evidence), and that it was date stamped February 8, 2019.

The tenants filed an application to dispute the Notice on February 14, 2019.

The landlord testified that she could not locate a copy of the tenancy agreement, and that it had likely been destroyed in a fire at another of her properties. She testified that the parties entered into a month to month tenancy agreement, starting July 9, 2018. Monthly rent was \$900.00. The tenants paid the landlord a security deposit of \$450.00, which she continues to retain.

The landlord testified that the tenants are in rental arrears as follows:

	Outstanding Rent
September 1, 2018	\$200.00
December 1, 2018	\$100.00
January 1, 2019	\$900.00
February 1, 2019	\$900.00
<b>Total</b>	<b>\$2,100.00</b>

### Analysis

I accept the landlord's evidence that the tenants were duly served with the Notice on February 8, 2019 in accordance with section 88 of the Act.

I accept the landlord's evidence and find that the tenants were obligated to pay monthly rent in the amount of \$900.00, as established in the tenancy agreement. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the balance of rental arrears due by February 1, 2019, in the amount of \$2,100.00, comprised of the balance of unpaid rent owed for the months of September 2018, December 2018, January 2019, and to February 2019.

Sections 46(4) and (5) of the Act state:

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's undisputed testimony and following a review the Notice, I find that the tenants were served with a notice to end tenancy that complies with the Act. Although the tenants disputed the Notice, they filed their claim on February 14, 2019, *six* days after being served with the Notice. Therefore the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must move out of the unit.

As this has not occurred, I find that the landlord is entitled to a two day order of possession, pursuant to section 55 of the Act.

I accept the landlord's uncontroverted evidence regarding unpaid rent. Accordingly, I order that the tenants pay the landlord \$2,100.00 representing unpaid rent for the months of September 2018, December 2018, January 2019, and February 2019.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the entirety of the \$450.00 security deposit in partial satisfaction of the monetary award.

In summary, I grant a monetary order to the landlord as follows:

Outstanding Rent	\$2,100.00
Filing Fee	\$100.00
Security Deposit Credit	<del>\$450.00</del>
<b>Total</b>	<b>\$1,750.00</b>

### Conclusion

I dismiss the tenants' application without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, it may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I order that the landlord may retain the entirety of the security deposit, in partial satisfaction of the amount owed by the tenants as rental arrears.

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$1,750.00 representing the balance of unpaid rent for the months specified above, the landlord's filing fee, and a credit for the retention of the security deposit. Should the tenants fail to comply with this order, it may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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 27, 2019

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Residential Tenancy Branch