



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, MNDCL-S, FFL

### Introduction

On January 23, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

The Landlord testified that he personally served both Tenants with the Notice of Dispute Resolution Proceeding by sending it via registered mail on January 29, 2019. Tenant JR stated that he received the package. The Landlord provided a tracking number for the package he sent to Tenant CF, who still lives in the rental unit. I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on June 1, 2017 and continued as a month-to-month tenancy. The rent was \$1,450.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$725.00.

Tenant JR testified that he provided written notice on November 30, 2018, to end the tenancy for himself, as of December 31, 2018. The Tenant stated that he paid rent for December 2018; however, did not pay rent for January, February or March 2018.

The Tenant stated that he moved out of the rental unit earlier than December 31, 2018 and left Tenant CF to work out a new Tenancy Agreement with the Landlord.

The Landlord testified that he attempted to communicate with Tenant CF and to collect rent; however, that Tenant CF has been evasive, has not signed a new Tenancy Agreement and has not paid rent for January, February or March 2019.

The Landlord stated that he served a 10-Day Notice to End Tenancy for Unpaid Rent, dated January 13, 2019 (the "Notice"), by placing it on the door of the rental unit on January 13, 2019. The Tenants had not paid the January rent and the Landlord provided them the Notice to advise them that they had five days to pay the rent or apply for Dispute Resolution. The Landlord stated that he did not receive any rent. The effective vacancy date on the Notice was January 20, 2019.

The Landlord is requesting a Monetary Order in the amount of three months rent, January, February and March 2019, in the amount of \$4,350.00. The Landlord also requests an Order of Possession for the rental unit that is effective on March 31, 2019.

## Analysis

The *Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants* ("PG13") will provide guidance to help determine when the tenancy ended and who is responsible for the unpaid rent. PG 13, as it applies to this dispute, is summarized as follows:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

In this case, I accept the undisputed evidence of Tenant JR and find that he provided proper, written notice to end the tenancy on December 31, 2018. As such, I find the tenancy should have ended on December 31, 2018 and all Tenants should have moved out of the rental unit.

According to the undisputed evidence, Tenant CF remained in the rental unit, failed to pay rent or enter into a new Tenancy Agreement with the Landlord. As a result, I find that the original Tenancy Agreement was still in effect, that the Tenants should have been paying rent, in accordance with Section 26 of the Act, and that both Tenants are severally liable for the outstanding rent in 2019.

The Tenants failed to pay the rent in full, as identified as owing in the Notice, within five days of receiving the Notice. The Tenants have not made Application pursuant to Section 46(4) of the Act within five days of receiving the Notice. In accordance with Section 46(5) of the Act, the Tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the Notice. In this case, this required the Tenant to vacate the premises by the corrected date of January 26, 2019. As that has not occurred, I find that the Landlord is entitled to an Order of Possession, in accordance with Section 55 of the Act. The Landlord will be given a formal Order of Possession which must be served on the Tenants. If the Tenants do not vacate the

rental unit by March 31, 2019, the Landlord may enforce this Order in the Supreme Court of British Columbia.

The Landlord has established a monetary claim, in the amount of \$4,450.00, which includes \$4,350.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit in the amount of \$725.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$3,725.00 in accordance with Section 67 of the Act.

The Landlord did not speak to a monetary claim regarding damages to the rental unit. I dismiss this part of the Landlord's claim with leave to reapply.

### Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on March 31, 2019 at 1:00 p.m. This Order should be served on the Tenants as soon as possible. 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.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$3,725.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: March 11, 2019

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Residential Tenancy Branch