



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL, CNR

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent testified that the tenants were personally served with the landlords' application for dispute resolution and the landlords' amendment package on February 7, 2019. I find that the tenants were served with the above packages in accordance with section 89 of the *Act* on February 7, 2019.

The landlords' application for dispute resolution only lists one of the two landlords stated on the tenancy agreement. The landlord's agent confirmed that both landlords listed on the tenancy agreement should have been included on the landlords' application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the landlords' application to state the landlords' names as set out in the tenancy agreement.

### Preliminary Issue- Tenants' Application

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent 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 landlords and I were the only ones who had called into this teleconference.

Rule 7 of the Rules of Procedure provides as follows:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states 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.

Based on the above, **in the absence of any evidence or submissions from the tenants I order the tenants' application dismissed without liberty to reapply.**

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords' agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords' agent provided the following undisputed testimony. This tenancy began on September 4, 2018 and is currently ongoing. Monthly rent in the amount of

\$1,500.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that on January 20, 2019 he personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of February 1, 2019 (the "10 Day Notice"). The 10 Day Notice was entered into evidence. The 10 Day Notice is dated January 20, 2018. The landlords' agent testified that he accidentally wrote the year 2018 when he intended on writing 2019. All other dates on the 10 Day Notice state the correct year, that being 2019.

The landlords' agent testified that the tenants have not paid rent for January, February or March 2019. The landlords' agent testified that the landlords are seeking a monetary order for unpaid rent in the amount of \$4,500.00.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenants. I accept the landlords' agent's testimony that the 10 Day Notice was personally served on the tenants on January 20, 2019.

I find that the tenants knew or should have known that date the 10 Day Notice was signed was January 20, 2019 instead of January 20, 2018. In accordance with section 68 of the *Act*, I amend the dated signed on the 10 Day Notice to state January 20, 2019. I find that the amended 10 Day Notice meets the form and content requirements of section 52 of the *Act*.

Based on the landlords' agent's undisputed testimony I find that the tenants have not paid any rent from January – March 2019. I therefore find that the landlords' 10 Day Notice is valid.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,500.00 on the first day of each month from January – March 2019 which they failed to do. Pursuant to section 67 of the *Act*, I find that the tenants owe the landlords \$4,500.00 in unpaid rent.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that 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.

In this case the tenants did not pay the overdue rent within five days of receiving it and their application for dispute resolution was dismissed. I therefore find that the landlords are entitled to two-day Order of Possession for nonpayment of rent, in accordance with section 55 of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords in the amount of \$4,600,00.

The landlords are provided with this Order 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service 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.

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