



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL OPRM-DR

### Introduction

This is a review hearing of an application by the landlord under the *Residential Tenancy Act* (“the *Act*”) for an order of possession, a monetary order for unpaid rent, and reimbursement of the filing fee. A review hearing was convened on February 19, 2019 where I determined that I had jurisdiction to hear this matter. The review hearing was adjourned to the present hearing.

This application was filed by the landlord on November 23, 2018. The landlord made a direct request application which was granted on December 6, 2018. The landlord was granted an order of possession and a monetary order for \$9,100.00, based upon rent owed for October 2018 and November 2018 and reimbursement of the filing fee.

The landlord’s lawyer, PD, attended the review hearing and he appeared on behalf of the landlord. The tenant did not attend the hearing. I kept the teleconference line open from the scheduled hearing time of 1:30 p.m. until the conclusion of the hearing at 1:41 p.m. to allow the tenant the opportunity to call. The teleconference system indicated only the landlord’s lawyer and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord issued the Ten-Day Notice on November 2, 2018. The landlord provided a witnessed proof of service which stated that the Ten-Day Notice was attached to the tenant’s door on November 2, 2018. I find that the tenant has been properly served with the Ten-Day Notice pursuant to section 88 of the *Act*.

The tenant submitted a sworn affidavit from AT, director of the tenant corporation, dated November 19, 2018 which stated:

On November 3, 2018 the Tenant discovered a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities at the front door of the property.

Pursuant to section 89 of the Act, I find that the Ten-Day Notice was served on the date it was received by the tenant, being November 3, 2018.

Preliminary Matter: Tenant's Application to Cancel Notice

In the previous hearing, the tenant testified that they attempted to file an application to dispute the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") in November 2018. The tenant represented that they attempted to file the application for disputed resolution but they were unable to pay the filing fee because the Residential Tenancy Branch (the "RTB") would not accept the tenant's foreign credit card. The tenant further testified that the RTB granted the tenant an extension to pay the filing fee.

At the commencement of this hearing, I informed the parties that, prior to the hearing, I reviewed the RTB file records relating to this matter. I found that the RTB records indicate that the tenant did start filing an application for dispute resolution on November 13, 2018. The file number for this application is referenced on the first page of this decision. However, the RTB records indicate that the tenant did not pay the filing fee and the application was determined to be abandoned on November 20, 2018. The RTB records indicate that tenant did not attempt to submit payment to the RTB. The RTB records further showed there was no record of an extension of time to pay the filing fee. Furthermore, the RTB records indicate that the RTB payment does accept foreign credit cards.

*Residential Tenancy Branch Rules of Procedure* (the "Rules"), Rule 2.4 states:

2.4 Submit an Application for Dispute Resolution Applications for Dispute

Resolution must be submitted through the Online Application for Dispute Resolution or to the Residential Tenancy Branch directly or through a Service BC Office with the required fee or fee waiver documents. Applicants who submit an Online Application for Dispute Resolution and choose to pay the fee or submit fee waiver documents in person must complete payment within three days of submitting the application. This three-day period for completing

payment is not an extension of any statutory timelines for making an application.

From my independent review of the RTB records, I find that the tenant did not pay the filing fee with the application or in person within three days of submitting the application. Accordingly, I find that the tenant's application to cancel the landlord's Ten-Day Notice is incomplete pursuant to *Rules 2.4*. As such, I find that tenant has not filed an application to dispute the landlord's Ten-Day Notice with the RTB.

#### Issue(s)

Is the landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Is the landlord entitled to a monetary order for unpaid rent and overholding damages pursuant to section 67 of the *Act*?

Is the landlord is entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The landlord submitted a tenancy agreement indicating that the parties entered a fixed term tenancy starting on September 19, 2018 and ending on September 30, 2019. The rent was \$4,500.00 per month, due on the first day of each month. The rent was prorated to \$1,800.00 for September 2018. The landlord testified that the tenant paid a security deposit of \$2,250.00 which the landlord still holds.

The Ten-Day Notice stated unpaid rent of \$9,000.00. The landlord submitted a monetary order worksheet which stated that the tenant owed rent of \$4,500.00 for October 2018 and \$4,500.00 for November 2018. The landlord testified that the tenant has not paid any rent to the landlord since the Ten-Day Notice was issued.

The landlord testified that the tenant still has possession of the rental unit. The landlord requests an order for the unpaid rent stated on the Ten-Day Notice and additional rent accumulating since the issuance of the notice. Furthermore, the landlord requests an order to apply the security deposit to the rent owed.

### Analysis

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served on the tenant by posting the notice on the tenant's door on November 2, 2018. However, the tenant acknowledged receipt of the notice on November 3, 2018 so the effective date of service of the notice is November 3, 2018 pursuant to section 89 of the *Act*. Accordingly, the tenant had five days after the date of service of November 3, 2018 to dispute the notice, that being November 8, 2018. However, the tenant did not file an application to dispute the notice in the RTB and the deadline to dispute the notice has expired.

Section 46(5) of the *Act* states that a tenant who does not timely file an application to dispute a notice to end tenancy for cause is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the rental unit by that date.

Since the tenant did not timely file an application to dispute the landlord's Ten-Day Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, November 13, 2019. Accordingly, I grant the landlords' application for an order for possession pursuant to section 55 of the *Act*.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the tenant was obligated to pay the monthly rent in the amount of \$4,500.00, on time and in full, each month, up to and including the rental period of November 2018.

I find that the tenant has not paid the rent for October 2018 or November 2018. Section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$9,000.00 for unpaid rent in October 2018 and November 2018.

I also find that the tenant owes \$15,387.08 for overholding the rental unit for the period of December 1, 2018 to March 13, 2019, calculated as described below.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a

landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on November 13, 2018. However, I am satisfied from the landlord's undisputed testimony that the tenant continue to overhold the rental unit up to the date of the hearing on March 13, 2019.

*Residential Tenancy Policy Guideline #3* states that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenant remained in the unit for the full rental periods of December 1, 2018 to February 28, 2019, the landlord is entitled to receive a total of \$13,500.00 (\$4,500.00 per moth for three months) for overholding that period. In addition, since the tenant remained in the rental unit until the date of this hearing on March 13, 2019, I find that the landlord is entitled to overholding rent in the amount of \$1,887.08 (thirteen days at the per diem rate of \$145.16).

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$2,250.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlord is entitled to a monetary order of \$22,237.08, calculated as follows.

<u>Item</u>	<u>Amount</u>
October unpaid rent	\$4,500.00
November unpaid rent	\$4,500.00
December overholding damages	\$4,500.00

January overholding damages	\$4,500.00
February overholding damages	\$4,500.00
March overholding damages	\$1,887.08
Less security deposit	(\$-2,250.00)
Filing fee	\$100.00
Total	\$22,237.08

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$22,237.08**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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 14, 2019

---

Residential Tenancy Branch