



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **Landlord:**    OPR, MNRL-S, FFL  
                                 **Tenants:**      CNR

### Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants sought:

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

The landlord and Tenant A.S. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to cross examine one another and to make submissions. Tenant A.S. (the tenant) stated that she would be representing the interests of both tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) while the landlord acknowledged receiving the Tenant's Application for Dispute Resolution (Tenants' Application). Pursuant to sections 88 and 89 of the *Act*, I find that both parties are found to have been duly served with the applications.

The landlord testified that the tenants are still in the rental unit and have not made any payments to the landlord since the 10 Day Notice was issued. At the outset of the

hearing the landlord sought to increase their monetary claim from \$3,600.00 to \$4,800.00 to reflect the tenants' failure to pay \$1,200.00 in monthly rent for March 2019, the additional month of unpaid rent accrued while waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 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.

I allow the amendment for March 2019 unpaid rent as this was clearly rent that the tenants would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

Both parties agreed that this tenancy began on April 01, 2018, with a monthly rent of \$1,200.00 due on the first day of the month. The landlord testified that they continue to retain a security deposit in the amount of \$600.00.

A copy of the signed 10 Day Notice, dated February 01, 2019, for \$2,400.00 in unpaid rent with an effective date of February 10, 2019, was included in the landlord's evidence.

The tenant acknowledged receipt of the 10 Day Notice, which was posted to the tenants' door, on February 01, 2019. The tenant confirmed that they have not paid the rent due to financial hardship but that they will be able to pay it when their tax refund is processed.

The landlord testified that the tenants have not paid the monthly rent for December 2018, January 2019, February 2019 and March 2019 in the amount of \$1,200.00 per month. The landlord stated that they are seeking an Order of Possession and a Monetary Order in the amount of \$4,800.00 for the unpaid rent owing for four months.

#### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

In accordance with sections 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 01, 2019. Section 46 of the *Act* requires that upon receipt of a 10 Day Notice, the tenants must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenants on February 01, 2019, I find that the tenants had until February 06, 2019, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the tenants submitted their Application on February 04, 2019, within the five day time limit permitted under section 46 (4) of the *Act*; however, based on the tenant's testimony, I find that the tenant has confirmed that they did not pay the monthly rent within the five days allowed by the *Act* or provide any evidence that had any legal authority under the *Act* to withhold any rent. For the above reasons, I dismiss the Tenants' Application to cancel the landlord's 10 day Notice, without leave to reapply.

Section 55(1) of the *Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the 10 Day Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As the tenant has confirmed that they have not paid the monthly rent to the landlord from December 2018 to March 2019, I find that the landlord is entitled to a monetary award in the amount of \$4,800.00 for unpaid rent owing for these months.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in their Landlord's Application, I allow them to recover the filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee for this application from the tenant.

Item	Amount
Unpaid December 2018 Rent	\$1,200.00
Unpaid January 2019 Rent	1,200.00
Unpaid February 2019 Rent	1,200.00
Unpaid March 2019 Rent	1,200.00
Less Security Deposit	-600.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$4,300.00</b>

The landlord is provided with this Order in the above terms and 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 Orders 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 15, 2019

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Residential Tenancy Branch