



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**FFL OPR-DR**

**CNR ERP FFT MT RP**

### Introduction

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

The landlord applied for:

- An order of possession for unpaid rent by direct request pursuant to sections 46 and 55;
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 day notice to end tenancy for unpaid rent pursuant to section 46;
- An order for emergency repairs to be made to the rental unit pursuant to section 62;
- Authorization to recover the filing fee from the landlord pursuant to section 72;
- An order for more time to cancel a notice pursuant to section 66; and
- An order for regular repairs to be made to the rental unit pursuant to sections 32 and 62.

Both the tenants attended and the landlord KH (“landlord”) attended, representing both the landlords. As both sides were present, service of documents was confirmed. The landlord confirmed receipt of the tenant’s application and evidence. The tenants confirm receipt of the landlord’s application and evidence. I find both parties served with their respective documents in accordance with sections 89 and 90 of the *Act*.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties’ respective positions have been recorded and will be addressed in this decision.

Preliminary Issue – address of rental unit on tenant's application

The tenants' application depicted an incorrect address compared to the tenancy agreement. Pursuant to section 64(3) of the *Act*, the tenant's application was amended to reflect the correct civic address as shown on the cover page of this decision.

Preliminary Issue – Amendment of Landlord's application

Rule 4.2 allows the director to amend an application at the hearing if requested by a party. The landlord sought to amend the direct request proceeding application to include unpaid rent for the months of February, March and April, 2019 as the tenants have not paid rent for those months. I found this amendment could be reasonably expected by the tenants and granted the landlord's application.

Preliminary Issue – arbitrator's line disconnected

During the proceedings, the arbitrator's line was inadvertently disconnected at 11:25 a.m. The line was reestablished by 11:26 a.m. without any loss of evidence, confirmed by the parties.

Issue(s) to be Decided

- Should the 10 Day Notice to end tenancy for unpaid rent be cancelled or upheld?
- Do the tenants require more time to cancel the Notice?
- Should regular repairs and emergency repairs be done to the rental unit?
- Should either party be required to pay the other for the filing fee?

Background and Evidence

A copy of the tenancy agreement was filed. The month to month tenancy commenced on December 20, 2018 with rent set at \$1,500.00 per month payable on the 20<sup>th</sup> of each month. The tenancy agreement states there is an addendum for utilities however neither party provided a copy of the addendum. Both parties agree the tenants were to pay 60% of the utilities. The tenancy agreement states the tenants were required to pay a security deposit in the amount of \$750.00.

The landlord testified that on February 20, 2019, she went to the tenants' rental unit to collect the rent. When she did, the tenants advised her they had a list of repairs they had done to the rental unit as well as a list of repairs requiring immediate attention. The tenants advised the landlord they would not be paying rent due to the ongoing requirement for repairs and until they were given a hard copy of the tenancy agreement. The landlord testified she sent copies of utility bills to the tenants by text message in January and sent a copy of the tenancy agreement in December or January. Proof of the cost of utilities and the landlord's service of the utility bills was not provided in the landlord's evidence.

On February 25, 2019 the landlord personally served the tenant BM with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"), filed as evidence. The Notice indicates that as of February 20, 2019, the tenants were in arrears of rent by \$1,500.00 and failed to pay utilities in the amount of \$369.83 following written demand provided on

February 20, 2019. The landlord testified it was an error to include the unpaid utilities on the Notice as she had not yet provided written demand and a copy of the utility bill when serving the Notice. The landlord filed proof of service of the Notice.

In her evidence, the landlord uploaded *April82019StatementofBalances...pdf*. In this document, the landlord credits the tenants for the following items:

Item	amount
Loss of use of kitchen and bathroom water 2 days	\$107.00
Improvements to upstairs room	\$400.00
Moving landlord's items (crib, garage items)	\$50.00
Smoke detectors – payment for installation	\$20.00
<b>Total reimbursement</b>	<b>\$577.00</b>

The same document claims the tenants owe \$1,500.00 for February rent, \$1,500.00 for March rent and assorted amounts for natural gas and municipal utilities.

The tenants testified that on February 20<sup>th</sup>, when the landlord came to collect the rent, they had the full amount of \$1,500.00 available in cash. The landlord demanded not just the February rent, but the additional \$369.83 in utilities which they were unprepared to pay. The tenants deny ever being presented with an accounting of how the \$369.83 was arrived at for 60% of utilities. The tenants testified they were not provided with a written demand for the utilities prior to February 20<sup>th</sup>. In the tenant's handwritten letter dated December 19, 2018 and March 1, 2019, the tenant wrote he felt he had the right to withhold a portion of the rent for labour done to the rental unit in his capacity as a contractor.

The tenants acknowledge receiving the Notice on February 25<sup>th</sup> and February's rent remains unpaid. They acknowledge the landlord has not come to collect rent from them for the months of March and April 2019. The tenants filed for dispute resolution on March 1, 2019, four days after receiving the Notice.

#### Analysis – more time to file an application

Section 46(4)(b) of the *Act* requires a tenant to dispute a Notice within five days of receiving it. The parties agree the landlord served the tenants with the Notice on February 25<sup>th</sup>. The tenants filed their application to dispute the Notice on March 1, 2019, four days later. I find the tenants filed within time as required under the *Act* and an order requiring more time to file is not required. This portion of the tenants' claim is dismissed.

#### Analysis – Order of Possession

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, *unless the tenant has a right under this Act to deduct all or a portion of the rent*. I find the tenants did not pay the February rent of \$1,500.00 on the

day it was due, February 20, 2019 and they did not have any right to deduct any portion of the rent as they did not have a director's order to deduct rent pursuant to section 65 of the Act. I uphold the landlord's Notice dated February 25, 2019.

I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the Notice has passed, I issue an Order of Possession effective two (2) days after service.

#### Analysis – Emergency Repairs and Regular Repairs

Since the tenancy has ended, the tenant's application to have repairs done to the rental unit is dismissed without leave to reapply.

#### Analysis - Monetary Order

During the hearing, the tenants did not dispute they didn't pay rent for the months of February, March and April, 2019. In accordance with sections 26 and 67 of the Act, I award the landlord \$4,500.00 in compensation for the unpaid rent.

The landlord has provided in her evidence acknowledgement the tenants should be reimbursed \$577.00 for loss of use of the rental unit and labour provided by the tenants. In accordance with section 72 of the Act, the landlord's total compensation awarded is reduced by \$577.00.

The landlord was unable to provide compelling evidence as to how the amount of \$369.83 was arrived at for utilities. For this reason, I dismiss this portion of the landlord's claim with leave to reapply.

The landlord's application was mostly successful. The landlord is entitled to recover the **\$100.00** filing fee for the cost of this application from the tenants.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit of \$750.00 in partial satisfaction of the monetary claim.

Item	Amount
February, March and April 2019 rent	\$4,500.00
Filing fee	\$100.00
Less security deposit held	(\$750.00)
Less reimbursement to tenant by landlord	(\$577.00)
<b>Total Monetary Order</b>	<b>\$3,273.00</b>

#### Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,273.00**.

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: April 26, 2019

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Residential Tenancy Branch