



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL OPRM-DR CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

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

JD (‘landlord’) appeared as agent for the landlord in this hearing. DM appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenants were served with the 10 Day Notice, with an effective date of April 20, 2019, on April 10, 2019 by way of posting the notice on the tenants’ door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on April 13, 2019, three days after posting.

Although the landlord had applied for a monetary Order of \$1,780.00 in their initial claim, another month's rent had become owing. I have accepted the landlord's request to amend their original application from \$1,780.00 to \$3,560.00 to reflect this additional rent that became owing by the time of the hearing.

### **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 for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

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

### **Background and Evidence**

This fixed-term tenancy began on November 1, 2018, with monthly rent currently set at \$1,780.00 payable on the first of the month. The landlord collected a security deposit of \$890.00, and still holds that deposit.

The landlord issued the tenants a 10 Day Notice for Unpaid Rent as the tenants failed to pay the April 2019 rent. Since the 10 Day Notice was issued on April 10, 2019, the tenants have failed to pay the outstanding rent, nor have they paid any rent for May 2019. The landlord is seeking an Order of Possession as well as a monetary order for the unpaid rent.

The tenants do not dispute that they have not paid the rent for April and May 2019, but testified in the hearing that this was due to circumstances beyond their control. The tenant DM testified in this hearing that he was to receive a lump sum settlement which would allow him to pay the monthly rent, but a large portion of that settlement was unfairly garnished. The tenant DM requested more time to pay the outstanding rent as he is disputing the garnishment as it was obtained by fraudulent means, and the tenants simply needed some time to sort the matter out.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26 (1)** 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.

The tenants did not dispute the fact that they had failed to pay the full rent due within five days of being deemed to have received the 10 Day Notice. Although I am sympathetic towards the tenants' situation, I find that the tenants failed to pay the outstanding rent as required by the *Act*. I, therefore, dismiss the tenants' application to cancel the 10 Day Notice. I find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenants did not dispute the fact that they failed to pay the full month's rent for April and May 2019. I, therefore, grant the landlord's application for \$3,560.00 in unpaid rent.

The landlord made an application for recovery of the filing fee for this application. As the landlord was successful in their application I am allowing the landlord to recover \$100.00 for the cost of this application.

The landlord continues to hold the tenants' security deposit of \$890.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

## **Conclusion**

I dismiss the tenant's application to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of the corrected effective date of April 23, 2019. I, therefore, grant an Order of Possession to the landlord effective two days after service of this Order on the tenant(s)

Should the tenant(s) and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I issue a monetary award in the landlord's favour in the amount of \$2,770.00 under the following terms:

Item	Amount
Unpaid Rent for April and May 2019	\$3,560.00
Recovery of Filing Fee for this Application	100.00
Less Security Deposit	-890.00
<b>Total Monetary Order</b>	<b>\$2,770.00</b>

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 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: May 29, 2019

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Residential Tenancy Branch