



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR FFT FFL MNRL-S OPM OPR

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46; and
- authorization to recover the filing fee for this application pursuant to section 72.

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

- 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 landlord, R.L., attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled hearing time at 9:30 a.m. for the duration of the hearing allow the tenant the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The landlord testified that they served their notice of dispute resolution on the tenant personally on May 15, 2019. I find that the tenant has been served in accordance with section 89 for the *Act*.

Preliminary Matter – Non-Appearance of Tenant at the Hearing

The applicant tenant did not appear at the hearing. Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing – 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 reapply.

As the applicant tenant did not attend the hearing, and in the absence of any evidence or submissions, I order the tenant's application be dismissed without leave to re-file.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for non-payment of rent pursuant to section 55?

Are the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on February 16, 2019. The tenancy agreement provided a monthly rent of \$1,250.00, due on the first day of each month. The parties agreed to prorated rent of \$200.00 for February 2019. However, the tenant did not pay any rent in February 2019.

The tenancy agreement also provided for a \$625.00 security deposit, payable on March 15, 2019. The tenant paid the March 2019 rent but the tenant did not pay the security deposit to the landlords by the March 15, 2019 deadline.

On April 1, 2019, the tenant paid the landlord the sum of \$825.00 which the landlord applied as follows:

- \$625.00 to security deposit

- \$200.00 February 2019 prorated rent
- \$25.00 to April 2019 rent

The landlord claimed that this left unpaid rent of \$1,225.00 for April 2019 (monthly rent of \$1,250.00 less payment of \$25.00)

The landlords issued the Ten-Day Notice on April 10, 2019. The Ten-Day Notice stated unpaid rent of \$1,225.00 with a moveout date of April 20, 2019. The landlord testified that the notice was posted on the tenant's door on the same day.

The landlord testified that the tenant paid the landlord the sum of \$700.00 on April 23, 2019. The landlord testified that the tenant has not made any further payments to the landlords.

### Analysis

I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,250.00 by the first day of each month pursuant to the tenancy agreement. I find that, although the tenant paid the landlords \$850.00 on April 1, 2019, I find that the tenant only paid \$25.00 rent on April 1, 2019 because \$625.00 was paid for the security deposit and \$200.00 was paid for prorated February 2019 rent.

I find that the landlord has issued and served a Ten-Day Notice for unpaid rent on April 10, 2019 by posting the notice on the tenant's door on April 10, 2019. I find that this notice complies with the required form and content pursuant to section 52 of the *Act*.

Since the notice was posted on the tenant's door, the tenant is deemed to have received the notice three days later, being April 13, 2019, pursuant to section 90 of the *Act*. Pursuant to section 90 of the *Act*, the tenant had five days after the date of effective service, being April 18, 2019, to pay the unpaid rent. I find that the tenant did not do so by the April 18, 2019 deadline. Accordingly, I find that the landlords are entitled to an order of possession effective two days after service on the tenant pursuant to section 55 of the *Act*.

I find that the tenant made partial rent payments totaling \$725.00 in April 2019. 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 \$525.00 for unpaid rent in April 2019.

I also find that the Tenant owes \$1,209.60 for overholding the rental unit for the period of May 1, 2019 to May 30, 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 April 23, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on May 30, 2019.

*Residential Tenancy Policy Guideline #3* states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants 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 rental unit until the date of this hearing on May 30, 2019, I find that the landlord is entitled to overholding rent in the amount of \$1,209.60 (30 days at the per diem rate of \$40.32).

Based on the undisputed testimony of the landlord, I find that the landlords hold a security deposit of \$625.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlords have been successful this matter, I award the landlords \$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 landlords are entitled to a monetary order of \$1,209.60, calculated as follows.

<u>Item</u>	<u>Amount</u>
April 2019 rent unpaid	\$525.00

May 2019 overholding damages	\$1,209.60
Less security deposit	-\$625.00
Filing fee	\$100.00
Total	\$1,209.60

### Conclusion

I find the landlords are 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 landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlords a monetary order in the amount of **\$1,209.60**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that Court.

I grant the landlord's application for reimbursement of the filing fee.

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 30, 2019

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Residential Tenancy Branch