



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNRL-S, MNDC-S, FFL, CNR, ERP, MT

### Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution in which the Landlords applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on April 26, 2019 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlords submitted to the Residential Tenancy Branch in April of 2019 were sent to the rental unit for each Tenant, via registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony.

The male Landlord stated that the documents mailed to the Tenant with the initials "S.H." were not picked up and were subsequently returned to the Landlords by Canada Post. He stated that he personally served these documents to that party on May 25, 2019.

On the basis of the undisputed evidence I find that the aforementioned documents were served to each Tenant in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*. I further find that the Tenant with the initials "S.H." was subsequently served with these documents in accordance with section 89(1)(a) of the *Act*.

As the Tenants were properly served with these documents, the hearing proceeded in the absence of the Tenants and the Landlords' evidence was accepted as evidence for these proceedings.

The Tenant with the initials "S.H." filed an Application for Dispute Resolution in which he applied to cancel a Ten Day Notice for Unpaid Rent or Utilities, for more time to file an application to dispute a Ten Day Notice for Unpaid Rent or Utilities, and for an Order requiring the Landlord to make emergency repairs.

The male Landlord stated that approximately one week ago the Landlords received the Tenant's Application for Dispute Resolution in the mail. He stated that the Landlords did not receive any evidence from the Tenant. As the Tenant has failed to establish that he served evidence to the Landlords, any evidence submitted by the Tenant was not considered during this adjudication.

The Landlords were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. They were advised of their legal obligation to speak the truth during these proceedings.

#### Preliminary Matter

The teleconference hearing was scheduled to begin at 9:30 a.m. on this date. The Landlords dialed into the teleconference prior to the scheduled start time. By the time the teleconference was terminated at 9:44, neither Tenant had appeared.

I confirmed that the correct call-in numbers and participant codes had been provided in both Notices of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only people who joined this teleconference.

I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution and I therefore dismiss the Tenant's Application for Dispute Resolution, without leave to reapply.

#### Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to a monetary Order for unpaid rent or utilities?

Are the Landlords entitled to retain the Tenants' security deposit?

### Background and Evidence

The male Landlord stated that:

- this tenancy began on May 01, 2018;
- the Landlords named in these proceedings have a written tenancy agreement with the Tenants named in these proceedings;
- the tenancy agreement requires the Tenants to pay rent of \$2,100.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,050.00 and a pet damage deposit of \$500.00;
- the Tenants still owe \$1,050.00 in rent for April of 2019 and \$2,100.00 in rent for May of 2019;
- a Ten Day Notice to End Tenancy for Unpaid Rent was placed in the Tenants' mail box on April 05, 2019; and
- the Tenants are still residing in the rental unit.

A copy of a Ten Day Notice to End Tenancy for Unpaid Rent was submitted in evidence. This Notice identifies Landlords and the Tenants named in these proceedings. The Notice declares that the rental unit must be vacated by April 13, 2019.

In the Tenant's Application for Dispute Resolution he declared that he received the Notice to End Tenancy on April 06, 2019.

The Landlords applied for unpaid rent from June of 2019. The Landlords were advised that if I granted the Landlords rent for June of 2019, the Tenants would be entitled to remain in the unit until the end of June. The Landlords withdrew this portion of their claim, with the understanding that they can file another Application for Dispute Resolution if the rental unit is not vacated by June 01, 2019.

### Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlords that required the Tenants to pay monthly rent of \$2,100.00 by the first day of each month and that the Tenants have not paid all of the rent due for April and May of 2019. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$3,150.00 in outstanding rent to the Landlords.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. As the Tenants have not paid all of the rent that was due on April 01, 2019, I find that the Landlords had the right to serve the Ten Day Notice to End Tenancy, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was placed in the Tenants' mail box on April 05, 2019. On the basis of the information provided in the Tenant's Application for Dispute Resolution, I find that this Notice was received on April 06, 2019.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant received this Notice on April 06, 2019, I find that the earliest effective date of the Notice was April 16, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was April 16, 2019.

As the Landlords have the right to end this tenancy, pursuant to 46 of the *Act*, and the Tenants did not pay the outstanding rent since being served with the Ten Day Notice to End Tenancy, I find that the Landlords are entitled to an Order of Possession for the rental unit.

I find that the Landlords' application has merit and that the Landlords are entitled to recover the cost of filing their Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$3,250.00, which includes \$3,150.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' pet damage deposit and security deposit of \$1,550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,700.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 30, 2019

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Residential Tenancy Branch