



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

FFL MNRL OPR

### Introduction

This hearing dealt with the landlord's application (filed April 5, 2019) pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an Order of Possession for non-payment of rent to section 55;
- a monetary order for unpaid rent in the amount of \$2,675.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing in his own capacity. Tenant WC appear on both his own behalf, and as a representative for tenant JS. Each was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and tenant WC confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package.

### Preliminary Issue – Tenants' Evidence

The tenant WC testified that he had prepared an evidence package as well as an application for dispute resolution contesting the validity of the 10 Day Notice to End Tenancy (the "**Notice**") served by the landlord that forms the basis for the landlord's application. Tenant WC testified that he sent this package by regular mail to the Residential Tenancy Branch ("**RTB**") office in Burnaby after having received the landlord's application for dispute resolution. As the landlord's application was filed on April 5, 2019, I find that the tenants mailed this package sometime after that date.

There is no record of the RTB ever receiving these documents.

Tenant WC testified that he did not serve a copy of these documents on the landlord. Rule of Procedure 3.15 states:

**3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that the tenants have failed comply with this Rule by not providing copies of the documents to the landlord. As such, none of the documents the tenants say they sent to the RTB (which the RTB have no record of receiving) will be permitted as evidence in this proceeding.

Preliminary Issue – Prior Decision

This matter came to a hearing before the RTB in January 2019 (the “**January Hearing**”). The landlord successfully applied for the same relief he is seeking today (albeit for a lesser monetary order). However, the landlord mistakenly claimed against the incorrect unit number in the rental property. He claimed against “Room A”, when, in fact, the tenants reside in “Room B”. As such, the landlord was unable to enforce the orders he obtained at the January Hearing. Additionally, as the application for dispute resolution was not served on the tenants (it was served on Room A, not Room B), the tenants did not have an opportunity to make submissions at the January Hearing.

The landlord did not submit a copy of the tenancy agreement into evidence at the January Hearing, so it was not possible for the presiding arbitrator to discover that the landlord had claimed against the incorrect rental unit.

On his monetary order worksheet, the landlord wrote as the basis for a portion of his monetary claim “previous judgement – \$1,375.00”. This judgment represented rental arrears for November and December 2018, and January 2019, plus his filing fee, and less the \$325.00 the security deposit.

As this order is not enforceable, I find that it is not a proper basis upon which to base a portion of the landlord’s claim in the current hearing. Rather, it is appropriate for me to consider the factual basis which underlies the landlord’s claim for the period of November 2018 to January 2019, and base my decision on that.

As such, in the event I find that there are rental arrears owing for November 2018 to January 2019, I will not make any order that the landlord may recover the filing fee for the January Hearing. The matter of the filing fee for the January Hearing was addressed at the January Hearing. That filing fee is not recoverable due to the error of the landlord. The tenant bears no responsibility for this error. As such, it would be inappropriate for me to order that the tenants to compensate the landlord for the January Hearing’s filing fee, as it was unnecessarily incurred.

#### Preliminary Issue – Amendment of Claim

At the outset of the hearing the landlord asked that his claim be amended to include compensation for rental arrears for April, May, and June 2019.

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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case the landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution. I find that the increase in the landlord’s monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of Act, I order that the landlord’s claim be amended to include a claim for April and May 2019 rent (\$1,300.00 total). I decline to make an order to amend the landlord’s claim for June 2019 rent, as that amount has yet to become due.

### **Issue(s) to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order; and
- 3) recover his filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord testified that the tenancy began on July 1, 2017. Monthly rent is \$650.00 and is due by the first day of each month. The tenants paid the landlord a security deposit of \$325.00 at the outset of the tenancy. The landlord has not returned this deposit to the tenants.

The landlord testified, and the tenant WC agreed, that the tenants have not paid monthly rent for the months of December 2018 to May 2019. Additionally, the parties agree that the tenants paid \$325.00 towards November 2018 rent. In total, the rental arrears are as follows:

November 2018 Arrears	\$325.00
December 2018 Arrears	\$650.00
January 2019 Arrears	\$650.00
February 2019 Arrears	\$650.00
March 2019 Arrears	\$650.00
April 2019 Arrears	\$650.00
May 2019 Arrears	\$650.00
<b>Total</b>	<b>\$4,225.00</b>

The landlord served the Notice on the tenants on March 26, 2019, with an effective date of April 5, 2019. Tenant WC confirmed receiving the Notice but could not recall the date. The landlord submitted a signed Proof of Service for in which a third party witness ("DB") states he witnessed the landlord serve the tenants personally with a copy of the Notice on March 26, 2019.

Tenant WC testified that:

- the reason the tenants did not pay rent as set out above was due to the condition of the rental unit;
- the rental property only had one working bathroom, and that, when the tenants moved in, the landlord represented that there would be a second working bathroom by August 2018;
- the rental unit was very dirty and had fleas;
- the tenants dealt with the fleas at their own expense;
- at some point prior to November 2018, a former tenant of the rental property kicked down the front door, and that, to date, the front door has yet to be repaired;
- the tenants notified the landlord repeated about these issues, and that the landlord did nothing to rectify them;
- all of the documentary evidence the tenants mailed to the RTB (discussed above) pertained to these issues; and
- the application to dispute the Notice which the tenants mailed to the RTB (discussed above) argued that the Notice ought to be set aside on the basis that the landlord had failed to address these issues.

## **Analysis**

### **Tenant's Application to Dispute the Notice**

Tenant WC testified that he send an application to dispute the Notice to the RTB by regular mail. The RTB has no record of receiving such an application.

The RTB accepts applications mailed to the RTB office, if they are accompanied with the requisite filing fee. Tenant WC gave no information as to whether he included the filing fee in his application materials. In instances where a tenant provides an application without a filing fee, an RTB employee will attempt to contact the applicant and provide information on how to file their application online, or in person at the RTB office in Burnaby or a Service BC office. If the RTB employee is not able to reach the applicant because they have not provided a telephone number, the application is mailed back with information on how to file an application (in person or online).

The tenants gave no evidence that they were contacted by an RTB employee, or that their application materials were returned. Therefore, I cannot find that they disputed (or attempted to dispute) the Notice.

Section 46(5) therefore applies:

**Landlord's notice: non-payment of rent**

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

As such, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, April 5, 2019.

I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenant.

In the event that I am incorrect, and that the tenants' did dispute the Notice, I would still find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, April 5, 2019.

Tenant's Late Filing of Dispute Notice

Section 46(4) of the Act states:

**Landlord's notice: non-payment of rent**

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect,  
or

(b) dispute the notice by making an application for dispute resolution.

I find that the tenants did not dispute the Notice within five days of service of the Notice (that is, by April 1, 2019). Tenant WC testified that he mailed the notice of application to dispute the Notice, along with his supporting evidence, to the RTB only after receiving the landlord's notice of dispute resolution proceeding and evidence. The landlord filed this application on April 5, 2019. On tenant WC's testimony, it is not possible that the tenants disputed the Notice by April 1, 2019.

As such, I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenant.

However, in the event that I am incorrect in my assessment of the above, I will consider the landlord's claim and that tenants' response as if the tenant disputed the Notice by April 1, 2019 (which I have already determined is not the case).

### Tenant's Response

The tenants admit that they have not paid rent as alleged by the landlord. The tenants' basis for opposing the Notice is that the landlord has failed to make repairs to the rental unit as are required, or as had previously been agreed to.

This is not a valid basis on which the tenants may withhold rent.

Section 26(1) of the Act states:

#### **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.

There is no basis in the Act for a tenant to withhold rent from a landlord for a failure to make repairs. If repairs need to be done, the tenant can apply to the Residential Tenancy Branch to have the repairs made pursuant to section 32 or 33. It is not permissible for the tenant to withhold rent until the repairs are made, unless an arbitrator has made such an order. In this case, no such order exists.

As such, I find that the tenants had an obligation to pay monthly rent to the landlord. Based on the testimony of the parties, I find that, to date, the tenants have failed to pay \$4,225.00 (as set out above) in monthly rent.

Section 46(1) of the Act states:

#### **Landlord's notice: non-payment of rent**

**46(1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenants were in arrears at the time the Notice was issued. I find that since the Notice was issued the tenants have not paid any portion of the rental arrears.

Accordingly, I find that the Notice was validly issued. I therefore would dismiss the any application made by the tenants dispute the Notice on the basis they opposed it in the hearing.

Section 55 of the Act states:

**Order of possession for the landlord**

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 form of the Notice complies with section 52 of the Act.

As such, I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenant.

Landlord's Monetary Claim

The parties agree that the tenants are in arrears in the amount of \$4,225.00 (as set out above). I find that there is no valid basis upon which the tenants may have withheld this amount. As such, the landlord is entitled to a monetary order for this amount.

As the landlord has been successful in his application, I find that he is entitled to recover his filing fee from the tenants.

Additionally, I find that the landlord may apply the security deposit of \$325.00 towards the monetary order made above.



In summary, I order that the tenants pay the landlord \$4,000.00, as follows:

November 2018 Arrears	\$4,225.00
Filing Fee	\$100.00
Security Deposit credit	-\$325.00
<b>Total</b>	<b>\$4,000.00</b>

I order that any amount the landlord collects pursuant to the monetary order made at the January Hearing be offset against this amount.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenants provide full and peaceable vacant possession of the rental unit to the landlord effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an Order of, the Supreme Court of British Columbia.

Pursuant to section 67 and 72 of the Act, I order that the tenants pay the landlord \$4,000.00. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an Order of, the Provincial (Small Claims) Court of British Columbia.

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 17, 2019

---

Residential Tenancy Branch