



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR ERP FFT MNDCT MNRT OLC RR FFL MNDCL MNRL OPR

### Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to sections 33 and 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

This hearing dealt with the landlords' application pursuant to the Act for:

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

The landlords attended the hearing. The landlords 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 for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The landlords testified the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 23, 2019 and deemed received by the landlord five days later, on April 28, 2019, pursuant to section 90 of the *Act*. The landlords provided the Canada Post tracking number in support of service referenced on the first page of the decision. The landlords testified that they served their evidence personally upon the tenant on May 6, 2019. Based on the undisputed testimony of the landlords, I find the landlords properly served the tenant with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence pursuant to section 88 and 89 of the *Act*.

The landlords testified that they issued the Ten-Day Notice on April 2, 2019 and the they posted on the tenant's door the same day. The Ten-Day Notice stated unpaid rent of \$2,300.00.

#### Preliminary Matter – Non-Appearance of Tenant at the Hearing

The 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 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 pursuant to section 55?

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

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

Background and Evidence

The landlords testified that the tenancy started on December 1, 2018 with monthly rent of \$2,300.00, payable on the first day of each month. The tenant paid a security deposit of \$1,150.00 which the landlords still hold. The tenancy agreement has a provision stating that the tenant must pay a fee of \$25.00 for late payment of rent.

The landlords testified that the tenant has not paid the April 2019 rent. Furthermore, the landlords testified that the tenant has not paid any rent since the Ten-Day Notice was issued.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Based upon the undisputed testimony of the landlords and the terms of tenancy agreement, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,300.00, on time and in full each month, up to and including the rental period commencing on April 1, 2019.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. Pursuant to section 46(4) of the *Act*, the tenant had five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, I find that the Ten-Day Notice was served on the tenant by posting the notice on the tenant's door on April 2, 2019. Pursuant to section 90 of the *Act*, the notice is deemed to have been served three days after posting, being April 5, 2019. Accordingly, the tenant had five days after the deemed date of service of April 10, 2019 to pay the rent owed under the notice. However, based on the landlords' undisputed testimony, I find that that the tenant did not pay the unpaid rent of \$2,300.00 within the required deadline.

Section 55 of the *Act* states that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*. In this matter the tenant has filed an application to cancel the Ten-Day Notice and tenant's application has been dismissed.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act*. Furthermore, based upon the landlords' undisputed testimony, I find that the tenant has not paid the stated unpaid rent on the Ten-Day Notice. Accordingly, I find the landlords are entitled to an order of possession effective two days after service on the tenants.

Further, 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 \$2,300.00.00 for unpaid rent in April 2019.

Based upon the landlord's undisputed testimony and the tenancy agreement, I also find that the tenant owes the landlord a late fee of \$25.00 for the non-payment of the April 2019 rent. Accordingly, pursuant to section 71(1), I find the landlords are entitled to a monetary award of \$25.00 for late fees.

I also find that the Tenant owes \$1,261.23 for overholding the rental unit for the period of May 1, 2019 to May 17, 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 15, 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 17, 2019.

*Residential Tenancy Policy Guideline #3* states that 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 tenants remained in the unit for the full rental periods of May 1, 2019 until the date of the hearing on May 17, 2019, I find that the landlords are entitled to overholding rent in the amount of \$1,261.23 (seventeen days at the per diem rate of \$74.19).

In addition, since the landlords have been successful this matter, I award the landlords \$100.00 for recovery of the filing fee.

Accordingly, I find that the landlords are entitled to a monetary order of \$3,686.23, calculated as follows.

<u>Item</u>	<u>Amount</u>
April 2019 rent unpaid	\$2,300.00
April 2019 late fee	\$25.00
May 2019 overholding damages	\$1,261.23
Filing fee	\$100.00
<b>Total</b>	<b>\$3,686.23</b>

Conclusion

The tenant's application is dismissed without leave to reapply.

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 landlord 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 **\$3,686.23**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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 17, 2019

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Residential Tenancy Branch