



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WELBEC PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing, reconvened from a Direct Request application, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55;
- A monetary award pursuant to section 67; and
- Authorization to recover the filing fee pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agents who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent JF (the "landlord") primarily spoke on behalf of the landlord.

The landlord testified that they had served the Interim Decision and Notice of Reconvened Hearing on each of the named respondents on April 11, 2019 by registered mail. The landlord provided two Canada Post tracking numbers as evidence of service. Based on the evidence I find that each of the respondents were deemed served with the landlord's materials on April 16, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has become due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably

foreseeable, I amend the landlord's Application to increase the landlords' monetary claim from \$2,807.22 to \$4,357.22.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

The landlord gave the following evidence. This periodic tenancy began in December 2018. The monthly rent is \$1,550.00 payable on the first of each month. A security deposit of \$775.00 was collected at the start of the tenancy and is still held by the landlord. The corporate landlord named on the tenancy agreement changed its name in 2018 to the name under which they have filed the present application. The landlord confirms they are the same corporate entity.

The landlord testified that the tenant failed to pay the full amount of rent owed on March 1, 2019 and a 10 Day Notice was issued on March 2, 2019 indicating an arrear of \$1,550.00. The tenants made payments in the amount of \$550.00 on March 2, 2019 and \$400.00 on March 4, 2019 but did not pay the full amount owed. The landlord issued receipts for the partial payments indicating they were accepted for use and occupancy only and did not reinstate the tenancy.

The tenants have subsequently failed to pay any rent for April and May, 2019. The tenants have also failed to pay the utilities or transfer the utility account to their name as required under the tenancy agreement. The landlord has paid \$657.22 for the utilities for this tenancy.

### Analysis

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,550.00. I accept the evidence before me that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. I accept the landlord's evidence that any payments made by the tenants were accepted for use and occupancy only and did not reinstate the tenancy. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on

the effective date of the 10 Day Notice, March 12, 2019. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$3,700.00. I accept the landlord's evidence that the tenant failed to transfer the utility accounts into their name as required under the agreement and as a result the landlord suffered a loss of \$657.22. Accordingly, I issue a monetary award for \$4,357.22 as at May 7, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$775.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises 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 order in the landlord's favour in the amount of \$3,582.22 under the following terms:

Item	Amount
Unpaid Rent March 2019	\$600.00
Unpaid Rent April 2019	\$1,550.00
Unpaid Rent May 2019	\$1,550.00
Utilities Paid by Landlord	\$657.22
Filing Fee	\$100.00
Less Security Deposit	-\$775.00
<b>TOTAL</b>	<b>\$3,582.22</b>

The tenants must be served with this Order as soon as possible. Should the tenants 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 7, 2019

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Residential Tenancy Branch