



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL, OPR

### Introduction

This hearing 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 order for unpaid rent pursuant to section 67; and,
- authorization to recover the filing fee for this application 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 for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that they personally served the tenant with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence at 3:50 p.m. on June 14, 2019 by delivering copies to the tenant at the tenant's rental unit. Based on the undisputed testimony of the landlord, I find the tenant has been sufficiently served with the Notice of Hearing and Application for Dispute Resolution documents pursuant to section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55?

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

Is the landlord entitled to authorization to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The landlord testified that the tenancy started on August 1, 1999. The rent was \$621.00 due on the first day of each month. The landlord testified that the tenant did not pay a security deposit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on May 10, 2019. The landlord testified that the notice was posted on the tenant's door on May 10, 2019. The landlord provided a witnessed proof of service in support of the Ten-Day Notice.

The Ten-Day Notice stated that the tenant had unpaid rent of \$621.00 payable as of April 1, 2019. The Ten-Day Notice stated move-out date of May 24, 2019.

The landlord testified that the tenant did not pay the rent arrears or file an application to dispute the Ten-Day. The landlord testified that the only payment the tenant has made since issuing the Ten-Day Notice was a payment of \$191.00 made on June 1, 2019 and a payment of \$1,800.00 on July 12, 2019. The landlord testified that the payment on June 1, 2019 and July 12, 2019 were both for use and occupancy only.

The landlord presented a rent invoice stating that the tenant had rent arrears of \$1,312.00 as of May 31, 2019. The invoice also claimed a laundry fee of \$16.00 and rent of \$621.00 for June 2019.

### Analysis

Pursuant to section 46(4) of the *Act*, tenants have 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 her door on May 10, 2019. Pursuant to section 90 of the *Act*, I find that the notice is deemed to have been served three days later, being May 13, 2019. Accordingly, the tenants had five days after the date of deemed service to dispute the notice, that being May 18, 2019. However, since the Residential Tenancy Branch was open on May 18, 2019, the deadline is extended to May 20, 2019. However, the tenant did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 46(5) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy for cause are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenants did not timely file an application to dispute the landlords' Ten-Day Notice, I find that the tenants are conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being May 24, 2019. Accordingly, I grant the landlords' application for an order for possession effective two days after service on the tenant pursuant to section 55 of the *Act*.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$621.00, on time and in full each month, up to and including the rental period beginning on May 1, 2019.

Based on the landlord's undisputed testimony and the landlord's rent invoice, I find that the tenant has unpaid rent in the amount of \$1,312.00 for the period up to and including May 2019 before this tenancy ended. 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 \$1,312.00 for unpaid rent up to and including May 2019.

I also find that the Tenant owes \$1,121.75 for overholding the rental unit for the period of February 1, 2019 to March 1, 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 May 24, 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 July 25, 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 tenants remained in the unit for the full rental periods of June 1, 2019 to June 30, 2019, the landlords are entitled to receive a total of \$621.00 for overholding that period. In addition, since the tenants also remained in the rental unit until July 1, 2019 to July 25, 2019, I find that the landlords are entitled to overholding rent in the amount of \$507.75 (one day at the per diem rate of \$20.03).

I find that the tenant is not responsible for the claimed laundry fee of \$16.00 for June 2019 because the tenancy agreement had already ended on May 24, 2019 pursuant to One Month Notice.

In addition, since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee pursuant to section 72 of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of **\$552.75**, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent up and including May 2019	\$1,312.00
Overholding damages from June 1, 2019 to July 25, 2019	\$1,121.75
Less: tenant payment on June 1, 2019	-\$181.00
Less: tenant payment on June 12, 2019	-\$1,800.00
Filing fee	\$100.00
<b>Total</b>	<b>\$552.75</b>

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenants. If the tenants fail 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 landlord a monetary order in the amount of **\$552.75**. 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: July 29, 2019

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Residential Tenancy Branch