



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** FFL MNDCL OPRM-DR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

The tenants confirmed receipt of the 10 Day Notice on April 15, 2019, which was posted on their door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on April 18, 2019, three days after posting.

Although the landlord had applied for a monetary Order of \$800.00 in their initial claim, since they applied another \$1,600.00 in rent has become owing that was not included in their application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original

application from \$800.00 to \$2,400.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

**Background and Evidence**

This tenancy began in October of 2018. The current landlord took over this tenancy on January 8, 2019. Monthly rent is currently set at \$800.00, payable on the first of the month. The tenants had paid a security deposit in the amount of \$400.00, which the landlord still holds.

The landlord issued the tenants a 10 Day Notice for Unpaid Rent on April 15, 2019 as the tenants failed to pay the April 2019 rent when it was due. It was undisputed by both parties that the tenants had paid the April 2019 Rent on April 30, 2019, which the landlord indicated was for use and occupancy only.

The landlord testified in the hearing that the tenants have failed to pay rent for May, June, and July 2019, and is seeking an Order of Possession as well a monetary order for the unpaid rent.

The tenants testified that they do not owe rent for May 2019 as they had performed work for the previous landlord in exchange for a reduction in rent. The tenants do not dispute that they owe rent for June and July 2019, but that they suffered from issues in the building that are still unresolved such as lack of security. The tenants testified that this was a “nuisance property”.

**Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent, the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the rent in full. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on April 28, 2019, the corrected, effective date on the 10 Day Notice. In this case, this required the tenants

and anyone on the premises to vacate the premises by April 28, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

**Section 26** of the Act, in part, states as follows:

**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.

I find that the tenants had failed to pay the outstanding rent as required by the *Act*. Although the tenants testified that they had performed work for the previous landlord in exchange for the May 2019 rent, I find that the tenants failed to provide sufficient evidence to support this agreement, nor did the tenants provide any proof of payment for the May 2019 rent. The tenants did not dispute that the June and July 2019 rent have yet to be paid. On this basis, I allow the landlord's monetary claim for \$2,400.00 in satisfaction of the unpaid rent for May, June, and July 2019.

As the landlord was successful in their application I am allowing the landlord to recover \$100.00 for the cost of this application.

The landlord continues to hold the tenants' security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$400.00 in partial satisfaction of the monetary claim.

**Conclusion**

I find that the landlord's 10 Day Notice is valid and effective as of the corrected, effective date of April 28, 2019. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants.

Should the tenants and any occupant 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 landlord a monetary order in the amount of \$2,100.00 as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Unpaid Rent for May, June, and July 2019	\$2,400.00
Filing Fee	100.00
Less Deposit Held by Landlord	-400.00
<b>Total Monetary Order</b>	<b>\$2,100.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: July 4, 2019

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Residential Tenancy Branch