



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPR MNR FF

### Introduction

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

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant D.Y. confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file. The tenant S.Y. testified that she moved out of the rental unit on May 15, 2019 and that she had not been served with the landlord's application. S.Y. testified that she only became aware of the hearing after a recent visit to the rental unit. The landlord confirmed that only tenant D.Y. was personally served with the application.

Section 89 of the Act requires that for an application for dispute resolution, other than an application for an order of possession, if served personally, must be served to each co-tenant separately. Therefore any monetary order arising out of this application will be issued naming only tenant D.Y. as liable.

### Preliminary Issue – Amendment to Landlord's Application and partial settlement.

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent that was payable for the months of June and July 2019. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that the landlord would

suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

The landlord also withdrew any monetary claim for unpaid utilities.

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

At the outset of the hearing, the tenant D.Y. advised that he was in the process of vacating the rental unit and was not disputing the landlord's application for an order of possession. The parties reached an agreement to settle the dispute relating to the request for an order of possession under the following final and binding terms:

1. The tenant and landlord reached a mutual agreement to **end this tenancy no later than 1:00 p.m. on July 12, 2019**, and, the landlord will be granted an **Order of Possession** effective this date.

#### Issues left to be determined

Is the landlord entitled to a monetary award for unpaid rent?

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

#### Background and Evidence

The tenancy began on November 16, 2016 and the current monthly rent is \$1400.00 payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$700.00 at the start of the tenancy which the landlord continues to hold.

The landlord served the tenants with a 10 Day Notice to End Tenancy on March 17, 2019. The outstanding amount of rent and utilities as per this notice was \$2820.00 which included unpaid rent of \$700.00 for February 2019, \$1400.00 for March 2019 plus outstanding utilities.

The landlord testified that the tenants have not paid any rent since being served with this 10 Day Notice. The landlord is claiming a total of \$7,700.00 which includes \$700.00 of unpaid rent for February 2019 plus \$1400.00 per month for the period of March 2019 to July 2019.

The tenant S.Y. testified that she paid rent in full for March 2019 and April 2019 and paid \$700.00 for May 2019 by cash. The tenants acknowledged that \$300.00 was outstanding from February 2019 and that no rent has been paid for June and July 2019. The tenants did not provide any cash receipts as proof of payment or any bank statements supporting that withdrawals were made from their account. The tenants testified that the landlord did not issue cash receipts.

The landlord disputed being paid any monies in cash for the above period.

### Analysis

Section 26 of the Act requires that 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 tenant was obligated to pay monthly rent in the amount of \$14000.00. On a balance of probabilities I find the tenants have not paid rent as claimed by the landlord. The tenants have failed to provide sufficient evidence that rent payments were made in cash as claimed. I award the landlord a monetary award in the amount of \$7700.00 for unpaid rent as claimed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$7800.00.

The landlord continues to hold a security deposit of \$700.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$7100.00.

### Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on July 12, 2019** as agreed to by the parties. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$7100.00. Should the tenant 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 08, 2019

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Residential Tenancy Branch