



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The landlords attended the telephone conference call hearing; the tenant did not attend.

The landlord testified and provided documentary evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on June 27, 2019. The landlord supplied testimony of the tracking number of the registered mail, which is listed on the style of cause page on this Decision.

Based upon the submissions of the landlords, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary Issue

The landlord used two different addresses for the rental unit. The landlord confirmed at the hearing that the proper designation is as listed on the style of cause page in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, to retain the tenant's security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

### Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on December 1, 2018, and monthly rent payable by the tenant is \$2,045.00, due on the first day of the month. The landlord testified that the tenants paid a total security deposit of \$1,022.45.

The landlord gave evidence that on June 2, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$2,045.00 as of June 2, 2019. The effective vacancy date listed on the Notice was June 12, 2019.

The landlord stated that the tenant did not pay rent for the month of June 2019, has not made any rent payments for July and August, 2019, and as of the date of the hearing, the tenant owed \$6,135.00 in unpaid rent.

I have no evidence before me that the tenant applied to dispute the Notice.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, June 12, 2019.

I therefore find that the landlord is entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

As such, I grant the landlord a final, legally binding order of possession of the rental unit. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As to the landlord's monetary claim, I also find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of \$6,135.00 in unpaid rent through August, 2019, due under the tenancy agreement.

I have allowed the landlord's request to amend their monetary claim at the hearing, to account for additional unpaid rent accumulated due to the hearing date set.

I grant the landlord a monetary award in the amount of \$6,135.00, pursuant to section 67 of the Act.

I also grant the landlord recovery of their filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$6,235.00, comprised of outstanding rent of \$6,135.00 through August 2019, and the \$100.00 filing fee paid by the landlord for this application.

I direct the landlord to retain the tenant's security deposit of \$1,022.45 in partial satisfaction of their monetary award of \$6235.00, and grant the landlord a monetary order for the balance due, in the amount of \$5,212.55.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

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: August 12, 2019

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Residential Tenancy Branch