



# 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 was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on August 8, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing. The Tenants did not attend the hearing.

The Landlord testified that she sent a copy of the Notice of Hearing along with supporting documentary evidence to each of the Tenants on June 22, 2019, by registered mail. I find the Tenants received this package on June 27, 2019, the fifth day after their registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlord to amend her application to include rent that has accrued since the original application date.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The Landlord testified that rent, in the amount of \$1,650.00, is due on the first day of each month. The Landlord does not hold a security deposit.

The Landlord testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it to the door of the rental unit on May 22, 2019. The Landlord provided a proof of service showing she had a witness attend and observe her post the Notice. The amount owing at that time was \$1,800.00. The Landlord summarized the cumulative unpaid rent as follows:

| <b>Date</b>                  | <b>Item</b> | <b>Amount Due</b> | <b>Amount Paid</b> | <b>Accrued Balance Owing</b> |
|------------------------------|-------------|-------------------|--------------------|------------------------------|
| April 1, 2019                | Rent Due    | \$1,650.00        |                    | \$1,650.00                   |
| May 1, 2019                  | Rent Due    | \$1,650.00        | \$1,500.00         | \$1,800.00                   |
| June 1, 2019                 | Rent Due    | \$1,650.00        |                    | \$3,450.00                   |
| July 1, 2019                 | Rent Due    | \$1,650.00        | \$1,650.00         | \$3,450.00                   |
| August 1, 2019               | Rent Due    | \$1,650.00        |                    | \$5,100.00                   |
| <b>Total Accrued Balance</b> |             |                   |                    | <b>\$5,100.00</b>            |

### Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does

not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed \$1,800.00 in past due rent at the time the 10 Day Notice was issued on May 22, 2019 (posted to door on this date). I find the tenants received the 10 Day Notice on May 25, 2019, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. I find the Tenants failed to pay rent in full within the required timeline. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenants owe and have failed to pay \$5,100.00 in past due rent.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,200.00** comprised of rent owed. This order must be served on the tenants. If the

tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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: August 08, 2019

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Residential Tenancy Branch