



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlords:    OPC   MNR   FF  
                                 Tenants:      CNR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on July 15, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on July 5, 201 (the “Tenants’ Application”). The Tenants applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, pursuant to the *Act*.

The Landlords attended the hearing and were represented by M.H., legal counsel. Also in attendance at the hearing for the Landlords were S.K., agent, and L.F., legal assistant. S.S. attended the hearing on behalf of both Tenants. S.K., E.P., K.P., and S.S. all provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlords, M.H. advised the Landlords’ Application package was served on the Tenants in person and by registered mail on August 16, 2019. Canada Post tracking information was provided which confirmed service by registered mail as indicated. Delivery information provided on the Canada Post website confirms the Landlords’ Application package was not collected. S.S. denied receipt. However, S.S. testified that he gained access to his rental unit on August 14, 2019, two days before the Landlords’ Application package was served. Pursuant to sections 89 and 90 of the

Act, documents served by registered mail are deemed to be received 5 days later. I find the Landlords' Application package is deemed to have been received by the Tenants on August 21, 2019, and was sufficiently served for the purposes of the Act.

S.S. testified the Tenants' Application package was served on the Landlords by registered mail on July 5, 2019, the day the Tenants' Application was made. S.S. did not refer me to any evidence in support of service in this manner, and M.H. denied receipt on behalf of the Landlord. I find there is insufficient evidence before me to conclude the Tenants' Application package was served on the Landlords as alleged. Therefore, I find the Tenants' Application is dismissed. However, in light of the oral testimony provided by the parties, described below, I find that this decision does not impact the outcome.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. At the conclusion of the hearing, the parties were given a further opportunity to provide further evidence or make submissions that they believed to be important. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Are the Landlords entitled to an order of possession?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to recover the filing fee?
4. Are the Tenants entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on July 1, 2019, and was expected to continue to June 30, 2020. Rent in the amount of \$1,850.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$925.00, which the Landlords hold. The parties agreed these were the basic terms of the tenancy.

On behalf of the Landlords, M.H. advised that the Tenants did not pay rent when due on July 1, 2019. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for

Unpaid Rent or Utilities, dated July 3, 2019 (the "10 Day Notice"). According to the M.H., the 10 Day Notice was served on the Tenants by posting a copy to the door of the Tenants' rental unit. A Proof of Service document and a photograph of an envelope attached to the Tenants' door were submitted into evidence in support. S.S. confirmed receipt of the 10 Day Notice on July 3, 2019. At that time, rent in the amount of \$1,850.00 remained outstanding. A copy of the 10 Day Notice was submitted into evidence.

Further, M.H. advised that the Tenants did not pay rent when due on August 1 and September 1, 2019, and that no partial payments have been made. Currently, rent in the amount of \$5,550.00 remains outstanding.

In reply, S.S. acknowledged rent has not been paid as alleged. However, S.S. testified he was locked out of the rental unit and was not able to return until August 14, 2019, pursuant to an order of possession granted to the Tenants on August 8, 2019. The file number of a related hearing has been included above for ease of reference. S.S. testified further that he has a pending claim for compensation relating to the lock-out, and other losses.

### Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the Landlords complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Further, section 46 of the *Act* permits a Landlords to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent or utilities.

In this case, I find the Tenants did not pay rent when due on July 1, August 1, and September 1, 2019, and that rent in the amount of \$5,550.00 remains outstanding. Despite the Tenants' claim that 3 months of rent has been withheld because he was locked out of the rental unit, I am not satisfied that the Tenants had a right under the *Act* to deduct all or a portion of rent. Having said that, I make no findings with respect to the Tenants' entitlement to compensation under the *Act*. Accordingly, I find the Landlords

are entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

In addition, I find the Landlords are entitled to a monetary order in the amount of \$5,550.00 for unpaid rent. Having been successful, I find the Landlords are also entitled to recover the \$100.00 filing fee paid to make the Landlords' Application. Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$5,650.00, which is comprised of \$5,550.00 in unpaid rent and \$100.00 in recovery of the filing fee paid to make the Landlords' Application.

### Conclusion

As noted above, I order that the Tenants' Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords is granted a monetary order in the amount of \$5,650.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 3, 2019

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Residential Tenancy Branch