



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: CNR, OLC, RP  
For the landlords: OPR, MNRL, FFL

### Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, and an order requiring the landlord to make repairs to the rental unit.

The landlords applied for an order of possession for the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlords and their legal counsel attended the hearing; the tenants did not attend.

The landlords submitted documentary evidence that the tenants were served with their Application for Dispute Resolution and Notice of Hearing by registered mail. The landlords provided the Canada Post receipts showing the tracking numbers of the registered mail, which are located on the style of cause page of this Decision.

Based upon the landlords’ oral and written submissions, I accept the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlords’ application in the tenants’ absence.

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

I have reviewed the oral and written 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.

*Procedural matter*-Despite having their own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenants did not attend.

Therefore, pursuant to section 7.3 of the Rules, I dismiss the application of the tenants, without leave to reapply.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and to recovery of the filing fee paid for this application?

#### Background and Evidence

The landlords submitted a copy of the written tenancy agreement showing that the tenancy began on April 30, 2019, monthly rent is \$1,200.00, due on the 1<sup>st</sup> day of each month, and the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$150.00.

The landlords submitted evidence that on July 6, 2019, they served the tenants with the Notice, by attaching it to the tenants' door, listing unpaid rent of \$1,200.00 owed as of July 1, 2019. The effective vacancy date listed on the Notice was July 16, 2019. The Notice was submitted into evidence.

The tenants did file their application to dispute the Notice within the 5 days allowed, as their application was made on July 7, 2019.

The landlords submitted that since the Notice was issued to the tenants, the tenants have not made any further rent payments and owe for the months of July and August 2019.

The landlords submitted that the tenants have primarily vacated the rental unit as of September 1, 2019; however, it is believed that they have not removed all their possessions. As a precaution, the landlords still requested an order of possession of the rental unit.

#### 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 comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenants that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within 5 days of service.

While the tenants filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenants.

Should the tenants 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 tenants are advised that costs of such enforcement are recoverable from the tenants.

I also find that the landlords submitted sufficient evidence to show that the tenants vacated the rental unit on September 2019, owing unpaid rent for July and August 2019.

I therefore find the landlords are entitled to a monetary award of \$2,500.00, comprised of unpaid rent of \$1,200.00 for July and \$1,200.00 for August 2019, and the \$100.00 filing fee paid by the landlords for this application.

At the landlords' request at the hearing, I direct the landlords to retain the tenants' security deposit of \$600.00 and the pet damage deposit of \$150.00 in partial satisfaction of their monetary award of \$2,500.00.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1,750.00.

Should the tenants fail to pay the landlords 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 tenants are advised that costs of such enforcement are recoverable from the tenants.

### Conclusion

The tenants' application is dismissed without leave to reapply as they failed to attend the hearing.

The landlords' application for an order of possession of 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: September 5, 2019

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Residential Tenancy Branch