



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **MNRL, FFL**

### **Introduction**

This hearing dealt with an application from the landlords pursuant to the Residential Tenancy Act (the “**Act**”) for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and late fees pursuant to section 67;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. Landlord OJ attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that landlord OJ and I were the only ones who had called into this teleconference.

Landlord OJ testified that the tenants were served the notice of dispute resolution and supporting evidence via registered mail on July 26, 2019. Landlord OJ provided a Canada Post tracking number (reproduced on the cover of this decision) to confirm this date. I find that the tenants were served with these documents in accordance with sections 88, 89, and 90 of the Act.

### Preliminary Issue – Amendment of Landlord's Claim

At the hearing landlord OJ sought to further amend her application to include a claim for August and September 2019 rent which he testified remains outstanding.

Section 4.2 of the Rules states that 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, as the landlords are seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the landlords' monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of Act, I order that the landlords' claim be amended so as to include a claim for rent owing for August and September 2019. The landlords' claim for damages is now as follows:

	Outstanding Rent
June 2019	\$1,800.00
July 2019	\$1,800.00
August 2019	\$1,800.00
September 2019	\$1,800.00
<b>Total</b>	<b>\$7,200.00</b>

### Issue(s) to be Decided

Are the landlords entitled to:

- an Order of Possession for non-payment of rent;
- a monetary order for unpaid rent;

### Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting February 1, 2019. Monthly rent is \$1,800.00 and is payable on the first of each month. The tenants paid the landlords a security deposit of \$900.00. The landlords still retain this deposit.

Landlord OJ testified that the tenants have not paid rental since May 2019, and that tenant JJ has not yet vacated the rental property. He testified that the tenants are in arrears as follows:

	Outstanding Rent
June 2019	\$1,800.00
July 2019	\$1,800.00
August 2019	\$1,800.00
September 2019	\$1,800.00
<b>Total</b>	<b>\$7,200.00</b>

Landlord OJ testified that the tenants were served in person with a copy of a 10 Day Notice to End Tenancy (the “**Notice**”) on July 7, 2019. The effective date of the Notice was July 17, 2019.

The tenants did not file an application to dispute the Notice.

### **Analysis**

I accept landlord OJ’s evidence that the tenants were duly served with the Notice on July 7, 2019 in accordance with section 88 of the Act.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,800.00, as established in the tenancy agreement. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the balance of rental arrears due by September 1, 2019, in the amount of \$7,200.00 comprised of the balance of unpaid rent owed for the months comprising the period of June 2019 to September 2019.

Sections 46(4) and (5) of the Act state:

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect,  
or

(b) dispute the notice by making an application for dispute  
resolution.

(5) If a tenant who has received a notice under this section does not pay  
the rent or make an application for dispute resolution in accordance with  
subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy  
ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by  
that date.

Based on landlord OJ's undisputed testimony and following a review the Notice, I find that the tenants were served with a notice to end tenancy that complies with the Act. As the tenants did not make an application for dispute resolution to contest the Notice, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (July 17, 2019), and must move out of the unit.

As this has not occurred, I find that the landlords are entitled to a two-day order of possession, pursuant to section 55 of the Act.

I accept landlord OJ's uncontroverted evidence regarding unpaid rent. Accordingly, I order that the tenants pay the landlords \$7,200.00 representing unpaid rent for the months of June 2019 to September 2019.

In accordance with the offsetting provisions of section 72 of the Act, I allow the landlords to retain the entirety of the \$900.00 security deposit in partial satisfaction of the monetary award.

In summary, I grant a monetary order to the landlords as follows:

Outstanding Rent	\$7,200.00
Security Deposit Credit	-\$900.00
<b>Total</b>	<b>\$6,300.00</b>

### **Conclusion**

I grant an order of possession to the landlords effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, it may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I order that the landlords may retain the entirety of the security deposit, in partial satisfaction of the amount owed by the tenants as rental arrears.

Pursuant to sections 67 and 72 of the Act, I find that the landlords are entitled to a monetary order in the amount of \$6,300.00. Should the tenants fail to comply with this order, it may be filed in, and enforced as an order of, the Small Claims Division of the British Columbia Provincial 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: September 20, 2019

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Residential Tenancy Branch