



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED  
PARTNERSHIP and [tenant name suppressed to  
protect privacy]

## **DECISION**

Dispute Codes

**FFL OPRM-DR**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the tenants pursuant to section 72; and
- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. to enable the tenants to call into this hearing scheduled for 9:30 a.m.

The landlord attended the hearing represented by property manager, AB ("landlord") and was given a full opportunity to be heard, to present sworn 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 the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenants.

The landlord gave evidence that he served each of the tenants with the Application for Dispute Resolution hearing package and evidence by registered mail on August 23, 2019. The landlord provided Canada Post tracking numbers for the mailings, recorded on the cover page of this decision. I find the tenants deemed served with the Application for Dispute Resolution hearing package and the evidence 5 days after the registered mailings, pursuant to section 89 and 90 of the *Act*.

### Preliminary Issue

Section 64(3) of the *Act* allows the director to amend an application for dispute resolution. The landlord sought to amend his application for a monetary order to include unpaid rent for August, September and October 2019. I allowed this amendment in accordance with section 64(3) as this hearing took place in October 2019.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover his filing fee?

### Background and Evidence

The landlord provided a copy of the tenancy agreement in evidence. The tenancy began on April 15, 2019 for a fixed term to end on April 20, 2020. Rent was set at \$1,695.00 per month payable on the first day of the month. A security deposit of \$847.50 was collected and the landlord continues to hold it. No pet damage deposit was taken.

In June of 2019, the tenants stopped paying rent. On July 5, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent by attaching it to the door of the tenants' residence. The effective date of the Notice was July 18, 2019 and the amount owing as of July 1, 2019 was \$3,496.50. A copy of the 10 Day Notice and a signed and witnessed proof of service document was filed as evidence by the landlord.

Since being served with the 10 Day Notice, the tenants have not paid any rent. The landlord submits the tenants are in arrears for five (5) months of rent, from June to October 2019.

### Analysis

I find the tenants were deemed served with the 10 Day Notice on July 8, 2019, three days after it was posted to their door in accordance with sections 89 and 90 of the *Act*.

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
  - (c) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (d) must vacate the rental unit to which the notice relates by that date.

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by July 18, 2019. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal **Order of Possession** which must be served on the tenants.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. I am satisfied by the landlord's undisputed testimony that the tenants did not pay rent for the months of June through October 2019. There is no evidence they had a right to deduct all or a portion of the rent. I award the landlord **\$8,475.00** ( $\$1,695.00 \times 5 = \$8,475.00$ ) for the five months of unpaid rent.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of **\$847.50**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary order.

Item	Amount
Rental arrears, June to October 2019	\$8,475.00
Filing fee	\$100.00

Less security deposit	(\$847.50)
<b>Total</b>	<b>\$7,727.50</b>

Conclusion

I grant an **Order of Possession** to the landlord effective 2 days after service on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$7,727.50**. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: October 10, 2019

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Residential Tenancy Branch