



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFL MNRL OPR**

**CNR**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenants pursuant to the Residential Tenancy Act (“Act”).

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenants pursuant to section 72;
- A monetary order for rent and/or utilities pursuant to section 67;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55

The tenants applied for:

- An order to cancel a 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46.

The tenants did not attend this hearing scheduled for 9:30 A.M., although I left the teleconference hearing connection open until 9:40 A.M. to enable the tenant to call in. The landlord attended the hearing. The landlord 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.

The landlord testified he served the tenants with his Application for Dispute Resolution and amendment dated September 1, 2019 by registered mail on September 3, 2019. The tracking number for the mailing is listed on the cover page of this decision. He further testified that the tenants served him with Notice of Dispute Resolution Proceedings describing today's teleconference hearing on August 30, 2019 and therefore were aware of today's hearing.

Issue(s) to be Decided

Should the 10 Day Notice be upheld or cancelled?

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

Can the landlord recover his filing fee?

Background and Evidence

The landlord provided the following undisputed testimony. There was no written tenancy agreement. The landlord does not live in the community where the rental unit is located and the tenants moved in on the recommendation of the manager of the rental unit. Rent was agreed to be set at \$675.00 per month payable on the first day of the month. No security deposit was taken and no condition inspection report was conducted at commencement of the tenancy.

From the beginning of the tenancy, the tenants had difficulty in paying rent. Excuses were given to the manager of the rental unit as well as the landlord. Eventually, the landlord decided to give the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on August 14<sup>th</sup>. The landlord testified he personally served the tenant CM on August 14, 2019. The landlord's spouse, VT testified that she witnessed the service. A signed, witnessed proof of service document was filed by the landlord. This document indicates the 10 Day Notice was served on August 15, 2019 by personal service.

The 10 Day Notice dated August 15<sup>th</sup> indicates the tenants are \$5,400.00 in arrears as of August 1, 2019 and the effective date noted is August 25, 2019. The landlord testified that he did not have access to accurate records of how much the tenants were in arrears when the Notice was served but discovered later that the actual amount was \$8,075.00 as of August 1, 2019. The landlord supplied a monetary order worksheet that indicates the tenants are \$9,475.00 as of October 1, 2019.

### Analysis

Despite his testimony that he served the Notice on August 14<sup>th</sup>, the landlord's witnessed proof of service document shows it was served on August 15<sup>th</sup>. Further, the Notice is dated August 15<sup>th</sup>. I am satisfied it was served on August 15, 2019 in accordance with sections 89 of the *Act*. The tenants filed to dispute the Notice on August 19, 2019, within 5 days of receiving it, in accordance with section 46 of the *Act*.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend a dispute resolution hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenants did not attend the hearing which was scheduled by conference call at 9:30 a.m. and concluded at 10:00 a.m. As they did not attend, they did not present evidence regarding the merits of their claim for me to consider. Consequently, I dismiss the tenants' claim without leave to reapply.

Section 55 of the *Act* states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- a. the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- b. the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. The landlord is entitled to an Order of Possession effective 2 days after service upon the tenants.

The landlord has given undisputed testimony that the tenants are in arrears of rent in the amount of \$8,750.00 as at the day of the landlord's amendment on September 1, 2019. As of today's hearing date, the tenants have likewise failed to pay rent for October 1, 2019 making the arrears in rent total \$9,425.00. In accordance with section 64(3)(c), I allow the landlord to amend his claim to include October arrears and award the landlord **\$9,475.00** for unpaid rent pursuant to section 67 of the *Act*.

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.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 **\$9,575.00**.

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 15, 2019

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Residential Tenancy Branch