



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNDL-S, MNRL-S, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:52 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord 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 the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with his application for dispute resolution via registered mail on August 23, 2019. The landlord provided the Canada Post tracking number verbally in the hearing to prove this registered mailing. The Canada Post tracking number is located on the cover page of this Decision. I find that the tenants were deemed served with the landlord's application for dispute resolution on August 28, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

The landlord testified that he served the tenants with his amendment, which changed the dispute address, in person at the end of August 2019, but could not recall on what date

specifically. I find that the tenants were served with the landlord's amendment in accordance with sections 88 and 89 of the *Act*.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to the landlord's monetary claim for damage, pursuant to section 67, to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The landlord's monetary claim for damage is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the landlord's monetary claim for damage, with leave to reapply.

#### Preliminary Issue- Withdrawal

During the hearing the landlord withdrew his application for a Monetary Order for unpaid rent and authorization to retain the tenants' security deposit. I dismiss the landlord's claims for a Monetary Order for unpaid rent and authorization to retain the tenants' security deposit with leave to re-apply.

#### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on June 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,400.00 is payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants to the landlord.

The landlord testified that on June 28, 2019 he personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, with an effective date of July 7, 2019 (the "10 Day Notice"). A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice states that the tenants failed to pay rent in the amount of \$2,914.00 that was due on June 1, 2019.

The landlord testified that the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice.

The tenants have not filed an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenants. I find that the tenants were served with the 10 Day Notice on June 28, 2019, in accordance with sections 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is July 8, 2019. I find that the corrected effective date of the 10 Day Notice is July 8, 2019.

Based on the undisputed testimony of the landlords, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has 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 tenant's failure to take

either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In this case, this required the tenants to vacate the premises by July 8, 2019, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenants. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

### Conclusion

The landlord is entitled to retain \$100.00 from the tenants' security deposit, pursuant to section 72 of the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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