



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL OPRM-DR FFL

### Introduction

On July 30, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

On August 6, 2019, the landlords submitted an Amendment to an Application for Dispute Resolution to add a claim for an order of possession on the basis of a Two Month Notice to End Tenancy for Landlord's Use, in addition to the claims applied for through the direct request application.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession on the basis of Notices to End Tenancy for Unpaid Rent and for Landlord's Use, pursuant to sections 46, 49 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:55 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent D.U. attended on behalf of the landlords 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 Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

#### Preliminary Issue – Service of the Landlord's Application for Dispute Resolution

As the tenants did not attend the hearing, I asked the landlord's agent to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenants were served individually with the Notice of Dispute Resolution Proceeding package for this hearing by Canada Post registered mail, but he could not recall the date as he did not have the registered mail tracking receipts with him at the hearing. As the landlord's agent confirmed that he had the tracking receipts, I allowed him until 4:00 p.m. on September 30, 2019 to either upload the receipts to the Residential Tenancy Branch (RTB) dispute website, or deliver the receipts to the RTB office for staff to upload.

By the above-noted deadline, the landlord's agent uploaded two Canada Post registered mail tracking receipts dated August 6, 2019. I have noted the tracking numbers on the cover sheet of this Decision.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after it is mailed.

Therefore, based on the testimony and the evidence before me, I find that the tenants were deemed served with the landlord's Notice of Dispute Resolution Proceeding package on August 11, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recovery of the filing fee for this application from the tenants?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence by the landlord. The landlord's agent confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began May 1, 2019.
- Current monthly rent of \$1,800.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenants only paid \$450.00 of the required \$900.00 security deposit. The landlords continue to hold the \$450.00 security deposit.

The landlord's agent testified that the tenants failed to pay any rent for July, August and September 2019. The landlord's agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) was served to the tenants by posting on the door on July 6, 2019. A Proof of Service signed by a witness to the service was submitted into evidence in support of the testimony of the landlord's agent.

The landlord's agent testified that the tenants had also been served in person with a Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) on June 30, 2019. A Proof of Service signed by a witness to the service was submitted into evidence in support of the testimony of the landlord's agent.

As such, the landlord's agent confirmed that the landlords are only seeking to recover unpaid rent for the months of July and August 2019, as the tenants are not required to pay rent for their last month (September) as compensation due to the service of the Two Month Notice upon them.

The landlord's agent testified that he had attended at the rental unit the day before the hearing, and it appeared that the tenants were in the process moving out of the rental unit, however, as the landlords had not yet regained possession of the rental unit, the landlord's agent stated they were still seeking an Order of Possession.

The landlord's agent testified that the tenants had not submitted any applications to dispute the notices to end tenancy.

### Analysis

The landlord has applied for an Order of Possession on multiple notices, and a Monetary Order for unpaid rent. I have addressed each of these issues separately as noted below.

### **Application for Order of Possession**

Section 49 of the *Act* contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy.

In considering this matter, I have reviewed the landlords' Two Month Notice to end the tenancy dated June 30, 2019, uploaded into documentary evidence to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the Two Month Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice as August 31, 2019; and explains the grounds for the tenancy to end.

Pursuant to section 49(8) of the *Act*, a tenant may dispute a Two Month Notice by making an application for dispute resolution within 15 days after the date the tenant received the notice. I have found that the tenants received the landlords' Two Month Notice on June 30, 2019.

If the tenant makes an application to dispute the notice, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

I accept the evidence before me that the tenants failed to dispute the Two Month Notice within the 15 days granted under section 49(8) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the vacancy effective date of the Two Month Notice, August 31, 2019. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As such, there is no need to consider the entitlement to an Order of Possession on the basis of the 10 Day Notice.

### **Application for Monetary Order for Unpaid Rent**

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the unchallenged testimony of the landlord's agent, I find that the tenant was obligated to pay monthly rent in the amount of \$1,800.00, as established by the terms in

the written tenancy agreement. I accept the unchallenged testimony of the landlord's agent that the tenants failed to pay rent for the months of July, August and September 2019.

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As such, I find that the tenants are entitled to withhold rent for the month of September 2019 as statutory compensation provided under section 51 of the *Act*.

In light of the above, I find that the landlords are entitled to a monetary award in the amount of \$3,600.00 [2 x \$1,800.00] for unpaid rent owing for the months of July and August 2019 only.

The landlords continue to retain the tenants' security deposit of \$450.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlords retain the tenants' entire security deposit of \$450.00 in partial satisfaction of the monetary award, and I issue a Monetary Order in the landlords' favour for the remaining amount of the monetary award owing.

Further to this, as the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenants. A summary of the monetary award is provided as follows:

Item	Amount
Amount of unpaid rent owing to the landlord as a monetary award	\$3,600.00
Landlord to retain security deposit in partial satisfaction of monetary award	(\$450.00)
Remaining amount of unpaid rent owing to the landlord	= \$3,150.00
Recovery of filing fee for this Application	+ 100.00
<b>Total Monetary Order in Favour of Landlord</b>	<b>\$3,250.00</b>

## Conclusion

I grant an Order of Possession to the landlords **effective two (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 order the landlords to retain the \$450.00 security deposit for this tenancy in partial satisfaction of my finding that the landlords are entitled to a monetary award for unpaid rent owing for the months of July and August 2019.

I issue a Monetary Order in the landlords' favour against the tenants in the amount of \$3,250.00 in satisfaction of the remaining amount owing in unpaid rent, and to recover the landlords' filing fee for this application. 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.

The landlords are provided with these Orders in the above terms and the tenants must be served with these Orders by the landlords as soon as possible.

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 2, 2019

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Residential Tenancy Branch