



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDCL-S MNRL-S OPR

### Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlords testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 4, 2019 and deemed received by the tenant five days later, on October 9, 2019, under section 90 of the *Act*. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlords, I find the landlord served the tenant with the documents pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started on December 1, 2015. The monthly rent was initially \$1,010.00, due on the first day of each month. The landlord testified that the rent increased to \$1,035.00 on September 1, 2019. The tenant paid a \$505.00 security deposit.

The tenant provided a rent ledger showing an outstanding rent balance of \$5,150.00 as of September 1, 2019. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on September 13, 2019. The Ten-Day Notice stated unpaid rent of \$5,075.00 as of September 1, 2019. The landlord provided a witnessed proof of service stating the Ten-Day Notice was posted on the tenant's door and sent to the tenant by registered mail on September 13, 2019. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision.

The landlord testified that the tenants paid \$1,010.00 on September 19, 2019. The landlord testified that this sum was accepted as for use and occupancy only. The tenant remains in possession of the rental unit. The landlord testified that tenants have not made any payments to the landlord after the September 19, 2019 payment of \$1,010.00.

The landlord is requesting an order of possession and an order of monetary compensation for the tenants' continued possession of the rental unit.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. In this matter, the landlord issued a Ten-Day Notice stating unpaid rent of \$5,075.00.

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, I find that the Ten-Day Notice was properly served on the tenant by posting the notice on the tenant's door and by delivering the notice by registered mail on September 13, 2019 pursuant to section 88 of the *Act* and the effective date of service was September 16, 2019, pursuant to section 90 of the *Act*. Accordingly, the tenant had five days after the date of effective service of September 16, 2019 to dispute the notice or pay the entire amount of outstanding rent stated in the notice.

I find that the tenant did not file an application to dispute the notice or pay the entire amount of outstanding rent stated in the notice prior to the expiration of the deadline set forth in section 46(4). Although the tenants did make a partial payment of \$1,01.00, the tenants are required to pay the entire amount stated in the notice to end tenancy to cancel the notice. The tenant has not done so and the deadline to pay the outstanding rent or dispute the notice has expired pursuant to section 46(4).

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based upon the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,010.00, on time and in full each month, up to and including the rental period commencing August 1, 2019. Based upon the landlord's undisputed testimony and the landlord's rent ledger, I find that rent increased to \$1,035.00 on September 1, 2019.

Based on the landlord's rent ledger and the based upon the landlord's undisputed testimony, I find that the tenant owed the landlord \$5,150.00 for outstanding rent of September 1, 2019. However, the tenant is entitled to a credit of \$1,010.00 for the payment made on September 19, 2019. Accordingly, the tenant owed the landlord the sum of \$4,140.00 for unpaid rent as of September 2019.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act* and the landlord has established on the balance of probabilities that the unpaid rent stated in the Ten-Day Notice was owing as stated in the notice. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

Further, section 7(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 7(1), I find the landlord is entitled to a monetary award of \$4,140.00 for unpaid rent through September 2019.

I also find that the Tenant owes \$1,168.56 for overholding the rental unit for the period of October 1, 2019 to November 4, 2019, calculated as described below.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on June 24, 2019. However, I am satisfied from the landlord's undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on August 23, 2019.

*Residential Tenancy Policy Guideline #3* states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental periods of October 1, 2019 to October 31, 2019, the landlords are entitled to receive a total of \$1,035.00 for overholding that period. In addition, since the tenants remained in the rental unit from November 1, 2019 until the date of the hearing on November 4, 2019, I find that the

landlords are entitled to overholding rent in the amount of \$133.56 (four days at the per diem rate of \$33.39) for November 2019.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$505.00 which may be deducted from the damages owed by the tenant pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$4,903.56, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent as of September 1, 2019	\$5,150.00
Payment by tenant on September 19, 2019	-\$1,010.00
October 2019 overholding damages	\$1,035.00
November 2019 overholding damages	\$133.56
Less security deposit	-\$505.00
Filing fee	\$100.00
<b>Total</b>	<b>\$4,903.56</b>

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$4,903.56**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be 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: November 04, 2019

---

Residential Tenancy Branch