



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CALEDONIA REALTY LTD.  
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:

- 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.

This matter was initially commenced as a direct request which was adjourned to this participatory hearing.

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 landlord testified that they served the tenant with the Notice of Reconvened Hearing, the interim decision and landlord's evidence by registered mail sent on October 11, 2019 and deemed received by the tenant five days later, October 16, 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 landlord, I find the landlord served the tenant with the required documents pursuant to section 89 of the *Act*.

### Issues to be Decided

Is the landlord entitled to an order for possession pursuant to section 55 of the *Act*?

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

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord testified that the tenancy agreement stated a monthly rent of \$700.00 per month, due on the first day of each month. The tenant paid a \$350.00 security deposit. The tenancy agreement had an addendum which imposed a fee of \$25.00 for the late payment of rent.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Ten-Day Notice") was issued on September 5, 2019. The landlord testified that the notice was posted on the tenant's door on September 6, 2019. The landlord provided a copy of the Ten-Day Notice which stated unpaid rent of \$725.00. The landlord testified that this included rent of \$700.00 and \$25.00 for a late fee.

The landlord testified that the tenant made the following payments after the Ten-Day Notice was served:

- \$440.00 on September 10, 2019;
- \$700.00 on September 26, 2019; and,
- \$310.00 on October 8, 2019.

The landlord testified that these payments were not accepted as payments of rent to continue the tenancy. The landlord testified that the tenant was told that the landlord is still seeking an order of possession when these payments were made.

The landlords testified that the tenant still resides in the rental unit.

### Analysis

Pursuant to section 46(4) of the *Act*, a tenant has five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served on the tenant by posting the notice on the tenant's door on September 6, 2019, which has an effective date of service of September 9, 2019 pursuant to section 90 of the *Act*. Accordingly, the tenant had five days after the effective date of service of September 9, 2019 to dispute the notice, that being September 14, 2019. However, I find that the tenant has not filed an application to dispute the notice and the deadline to dispute the notice has expired.

Section 46(5) of the *Act* states that a tenant who do not timely file an application to dispute a notice to end tenancy for cause is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenant did not timely file an application to dispute the landlords' Ten-Day Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being September 19, 2019. Furthermore, I find that the Ten-Day Notice complies with the form and content requirements of section 55. Accordingly, I grant the landlord's application for an order for possession pursuant to section 55 of the *Act*.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$700.00, on time and in full each month, up to and including the rental period ending September 20, 2019.

I find that the tenant did not pay the September 2019 rent of \$700.00 by the September 1, 2019 due date. Section 71(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 71(1), I find the landlord is entitled to \$700.00 for the September 2019 rent.

The landlord also claimed a \$25.00 late fee for September 2019. I find that the tenancy agreement has a provision requiring a late fee of \$25.00 for late payment of rent. Residential Tenancy Regulation 7(1)(d) authorizes late fees up to \$25.00. I find that the tenant was late paying the September 2019 rent so I award the landlord \$25.00 for a late fee pursuant to section 71(1) of the *Act*.

I also find that the tenant owes overholding damages from October 1, 2019 to the date of the hearing on November 14, 2019.

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 September 19, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenant continues to overhold the rental unit up to the date of the hearing on November 14, 2019.

*Residential Tenancy Policy Guideline #3* states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if a tenant remains 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. Accordingly, I find that the tenant is liable for overholding damages on a per diem basis after the end of the tenancy but the tenant is not liable for late fees after the effective date of the Ten-Day Notice since the tenancy agreement had expired.

As the tenant remained in the unit for the full rental period of October 1, 2019 to October 31, 2019, the landlord is entitled to \$700.00 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 14, 2019, I find that the landlord is entitled to overholding rent in the amount of \$326.62 (fourteen days at the per diem rate of \$23.33).

Based on the landlord's undisputed testimony, I find that the tenant has made the following payments after the Ten-Day Notice was served: (1) \$440.00 on September 10, 2019; (2) \$700.00 on September 26, 2019; and, (3) \$310.00 on October 8, 2019. Further, based on the landlord's undisputed testimony, I find that these payments were accepted for use and occupancy of the rental unit only and these payments were not accepted to reinstate the tenancy. However, I find that the tenant is entitled to a credit for each of these payments.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$350.00 which may be deducted from the damages owed by the tenants 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 \$51.62, calculated as follows.

<u>Item</u>	<u>Amount</u>
September rent	\$700.00
September late fee	\$25.00
Less: payment on September 10, 2019	-\$440.00
Less: payment on September 26, 2019	-\$700.00
October overholding damages	\$700.00
Less: payment on October 8, 2019	-\$310.00
November overholding damages	\$326.62
Less security deposit	-\$350.00
Filing fee	\$100.00
<b>Total</b>	<b>\$51.62</b>

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlords 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 **\$51.62**. If the tenant fails 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 14, 2019

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Residential Tenancy Branch