



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NICKOLAS FLORIO VASSILAKAKIS & JOHN VASSILAKI  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MND FF

### Introduction

This application was originally made under the Direct Request process which is an Ex-Parte process based on paper submissions only. As such the submissions must be complete and have no ambiguities. The Landlord's application did not clearly state the day of the month the rent payment was due; therefore the adjudicator could not determine if the rent was late or not. Consequently the application was adjourned to a participatory hearing on today's date.

The Landlord confirmed the rent was due on the first day of each month and the Tenant has unpaid rent for August, September, October and November 2019.

Further the Landlord also amended his application on November 12, 2019 to include additional unpaid rent and a damage claim of \$1,218.00.

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent, compensation for damage to the unit, site, and property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on November 5, 2019. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Are there damages and is the Landlord entitled to compensation for the damages?

Background and Evidence

This tenancy started in August 1, 2019 as a one year fixed term tenancy with an expiry date of July 31, 2020. Rent is \$850.00 month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$602.50 of rent for August 2019 when it was due and as a result, on August 19, 2019 he personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 19, 2019. The Landlord said the Tenant is living in the unit and he is requesting an Order of Possession for as soon as possible as the Tenant is disrupting the rental complex.

Further the Landlord said the Tenant has unpaid rent of \$425.00 for each month of September, October and November 2019. The Landlord said he is requesting compensation for a total of unpaid rent in the amount of \$1,877.50. The unpaid rent is for August of \$602.50 and for September, October and November in the amount of \$1,275.00.

In addition the Landlord said the Tenant has allowed people into the rental complex that have caused damage to the common areas of the rental complex. The Landlord submitted an estimate for painting the wall of the halls and common area in the amount of \$1,218.00. The Landlord said he submitted a witness letter from an X tenant that indicates she moved out because of the Tenant's behaviour and the Tenant's guests damaged the common areas of the rental complex. The Landlord requested \$1,218.00 in compensation for damages to the rental complex.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the days it is received in person, or on August 19, 2019. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 24, 2019.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Further, as the Tenant has not paid the overdue rent and has not applied for dispute resolution; I find that the Landlord is entitled to recover unpaid rent for August through to November 2019 in the amount of \$1,877.50.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Landlord claim for damage to the common areas of the rental complex; I find the Landlord has not provide sufficient corroborative evidence that shows the Tenant is solely responsible for the damage to the common areas. As well there are no condition reports on the common areas to establish a base line of the common areas condition at the start of the Tenant's tenancy; therefore I find the Landlord has not established grounds to be awarded the damage claim of \$1,218.00. I dismiss the Landlord's damage claim without leave to reapply.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 1,877.50	
Recover filing fee	\$ 100.00	
Subtotal:		\$1,977.50
Less the security deposit:		\$ 425.00
Balance Owing		\$ 1,552.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,552.50 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: November 26, 2019

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Residential Tenancy Branch