



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR-DR, MNRL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession and a Monetary Order for recovery of \$3,700.00 in unpaid rent for September 2019 and October 2019.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenants. I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said that he served his Application and documentary evidence on the Tenants via registered mail and he provided Canada Post tracking numbers for these packages. I find that the packages were deemed served on the Tenants pursuant to the Act.

### Preliminary and Procedural Matters

The Landlord provided his email address at the outset of the hearing and confirmed his understanding that the Decision would be emailed to him and mailed to the Tenants, and any Orders sent to the appropriate Party.

The Landlord applied for recovery of \$3,700.00 for unpaid rent that was owing for September and October 2019 at the time he filed his Application. However, the Tenants have not paid rent for November 2019, so the Landlord states that the Tenants now owe him \$5,550.00 in unpaid rent. Rule 4.2 authorizes me to amend the Landlord's Application for recovery of unpaid rent:

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Accordingly, I amend the Landlord's monetary claim to reflect recovery of the three months of unpaid rent owed by the Tenants in the amount of \$5,550.00.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

#### Background and Evidence

The Landlord confirmed the details in the tenancy agreement he submitted, which included that the periodic tenancy began on November 1, 2018, with a monthly rent of \$1,850.00, due on the first day of each month. The Landlord said the Tenants paid a security deposit of \$925.00, and no pet damage deposit.

The Landlord said that he has not received any rent from the Tenants in three months – September, October, and November 2019. He said that the Tenants are almost always late paying rent, but he allowed them to pay twice a month.

The Landlord said he waited until Friday, September 6, 2019, before contacting the Tenants about the rent. He said he has served the Tenants with 10 Day Notices before, but they always paid after receiving the 10 Day Notice.

The Landlord said he served the Tenants with the 10 Day Notice in person on September 8, 2019, and he provided a proof of service form to confirm this service. He submitted a copy of the 10 Day Notice, which was signed, dated, has the rental unit address and the grounds being that the Tenants failed to pay \$1,850.00 in rent on September 1, 2019.

The Tenants did not apply for dispute resolution to cancel the 10 Day Notice.

#### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.
- [emphasis added]

The Tenants did not pay anything toward the rent owing after they received the 10 Day Notice, and they did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, and must vacate the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was served with the 10 Day Notice on September 8, 2019.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$5,550.00 in unpaid rent as of November 1, 2019.

The 10 Day Notice was signed, dated, had the grounds, the rental unit address and the effective vacancy date of September 19, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenants did not attend the hearing to provide testimony as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$5,500.00 in rent owing for the three months prior to the November 7, 2019 hearing. Therefore, the Landlord's Application for an Order of Possession is granted, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenants have not paid full rent since July 2019, the Order of Possession will be effective two days after service of the Order on the Tenants.

I find that the Landlord has established a total monetary claim of \$5,550.00 comprised of three months of unpaid rent. I Order that the Landlord retains the security deposit of \$925.00 in partial satisfaction of his claim, and I grant the Landlord a Monetary Order pursuant to section 67 of the Act, for the balance due of \$4,625.00.

### Conclusion

The Landlord is successful in his Application for an Order of Possession and for a Monetary Order for unpaid rent. The Tenants did not pay rent for the last three months, and did not apply to dispute the 10 Day Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenants.

The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Further, I authorize the Landlord to retain the security deposit of \$925.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order pursuant to section 67 of the Act, for the balance due of **\$4,625.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 07, 2019

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Residential Tenancy Branch