



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      TT: CNC, CNR, OLC, RP, FFT  
                                 LL: MNDCL-S, MNRL-S, OPC, OPR, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants’ Application for Dispute Resolution was made on September 17, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice to End Tenancy for Cause;
- to cancel a 10 Day Notice for Unpaid rent;
- an order for regular repairs;
- an order that the Landlord comply with the *Act*; and
- an order granting the recovery of the filing fee

The Landlords’ Application for Dispute Resolution was made on October 2, 2019, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for cause;
- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order for damage, compensation or loss; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenants testified that they served their Application to the Landlords in person however could not recall the date of service. The Tenants stated that they later served their documentary evidence to the Landlords by placing it in their mailbox. The Tenants could not recall the date of service. The Landlord stated that she received both packages in her mailbox but could not recall the date of receipt. The Landlord stated that she served the Tenants with her Application by registered mail on October 5, 2019. The Landlord stated that she served the Tenants with her documentary evidence by placing it in the Tenants' mailbox sometime in the first week of November 2019. The Tenants confirmed receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the One Month Notice as well as the 10 Day Notice.

The Tenants' request for an order for regular repairs, and an order that the Landlord comply with the *Act* are dismissed with leave to reapply.

Also, the Landlords' request for a monetary order for damage, compensation or loss is also dismissed with leave to reapply.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice dated September 9, 2019 (the "One Month Notice"), pursuant to Section 47 of the *Act*?

2. Are the Tenants entitled to an order cancelling the 10 Day Notice dated September 9, 2019 (the "10 Day Notice"), pursuant to Section 46 of the *Act*?
3. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenants are not successful in cancelling the Notices to End Tenancy, are the Landlords entitled to an order of possession, pursuant to Section 55 of the *Act*?
5. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
6. Are the Landlords entitled to retain the security deposit, pursuant to Sections 38 and 67 of the *Act*?
7. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2019. Currently, the Tenants are required to pay rent in the amount of \$1,600.00 which is due to be paid to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 which the Landlords continue to hold.

The Landlord testified that the Tenants did not pay rent in full in September 2019. The parties testified and agreed that the Tenants failed to pay rent in the amount of \$46.00.

The Landlord testified that she subsequently served the Tenants in person with the 10 Day Notice for unpaid rent in the amount of \$46.00, on September 9, 2019, with an effective vacancy date of September 19, 2019. The Tenants confirmed receiving the 10 Day Notice on September 9, 2019.

The Landlord stated that the Tenants failed to pay the outstanding balance of rent owing for September 2019 and have also failed to pay any amount of rent for October and November 2019. The Landlord stated that currently, the Tenants have an outstanding balance of unpaid rent in the amount of \$3,246.00.

The Tenants stated that they submitted their Application to cancel the 10 Day Notice on September 17, 2019. The Tenants agreed that they did not pay rent in the amount of \$46.00 for the month of September 2019. The Tenants stated that they felt entitled to withhold this amount in relation to a repair they made to the dryer vent hose which had holes in it. The Tenants stated that they had a verbal conversation with the Landlord

about the reimbursement of the \$46.00, however, the Landlord later changed her mind. The Landlord stated that the Tenants did not notify her regarding the repair and unilaterally decided to keep this amount. The Tenants agreed that they have not paid any amount of rent to the Landlords since.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the 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 this Act to deduct all or a portion of the rent.

Section 46 of the Act states 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.

The Landlord served the 10 Day Notice dated September 9, 2019, with an effective vacancy date of September 19, 2019, by serving it to the Tenants in person on September 9, 2019. The Tenants confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Accordingly, pursuant to section 46(4) of the Act, the Tenants had until September 14, 2019 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I find that the Tenants filed their Application to dispute the 10 Day Notice on September 17, 2019. As a result, pursuant to section 46(5) of the Act, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

As such, the Tenants' Application to cancel the 10 Day Notice is dismissed without leave to reapply. As the Tenants' were not successful with their Application, I find that they are not entitled to the return of their filing fee.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As I have granted the Landlords an order of possession based on the 10 Day Notice, I find that the Tenants' Application to cancel the One Month Notice as well as the Landlords' Application for an Order of Possession in relation to the One Month Notice are now moot and therefore dismissed without leave to reapply.

The parties agreed that the Tenants have not paid rent in the amount of \$3,246.00. I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$3,246.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$2,546.00, which has been calculated as follows:

<b><i>Claim</i></b>	<b><i>Amount</i></b>
<i>Unpaid rent:</i>	\$3,246.00
<i>Filing fee:</i>	\$100.00
<i>LESS security deposit:</i>	-( \$800.00)
<b><i>TOTAL:</i></b>	<b><i>\$2,546.00</i></b>

### Conclusion

The Tenants breached Section 26 of the *Act* by not paying rent when due.

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$2,546.00. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2019

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Residential Tenancy Branch