



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

FFL OPRM-DR CNR OLC

### **Introduction**

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing, which lasted approximately 10 minutes despite the teleconference line remained open for the duration of the hearing. The notices of hearing were confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served the 10 Day Notice on the tenant on September 5, 2019 by posting it on the rental unit door. The landlord submitted a sworn Proof of Service form as evidence. Based on the evidence I find that the tenants are deemed served with the 10 Day Notice on September 8, 2019, three days after posting in accordance with sections 88 and 90 of the *Act*.

The landlord testified that they served the landlord's application for dispute resolution on the tenants by registered mail sent on September 20, 2019. The landlord provided valid Canada Post tracking numbers as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed served with the landlord's application on September 25, 2019, five days after its mailing.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and that the rental arrears as of the date of the hearing is \$5,200.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim from \$2,600.00 to \$5,200.00 as the additional amount of rent arrears could be reasonably anticipated.

#### Issue(s) to be Decided

Are the tenants entitled to any of the relief sought?

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as sought?

Are the landlords entitled to recover their filing fee from the tenants?

#### Background and Evidence

This periodic tenancy began in January 2019. The monthly rent is \$1,300.00 payable on the first of each month. A security deposit of \$500.00 was collected at the start of the tenancy and is still held by the landlords.

The tenants failed to pay any rent for the months of August, September, October and November, 2019. The landlord testified that at the time the 10 Day Notice was issued there was a rental arrear of \$2,600.00 the amount noted on the notice. The landlord said that as of the date of the hearing the arrears for this tenancy is \$5,200.00.

#### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenants' application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenants' application, and I find that the landlords' 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlords are entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenants were obligated to pay the \$1,300.00 monthly rent. I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$5,200.00. I issue a monetary award in the landlords' favour for unpaid rent of \$5,200.00 as at November 21, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$500.00 in partial satisfaction of the monetary award issued in the landlords' favour.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$4,800.00, which allows them to collect the unpaid rent and filing fee and retain the security deposit for this tenancy.

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 21, 2019

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Residential Tenancy Branch