



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROCKWELL DEVELOPMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      Tenant: CNR, DRI, RP, LRE, OLC, MNDCT  
Landlord: OPRM-DR, 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 October 7, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent;
- to dispute a rent increase;
- an order for regular repairs;
- an order restricting the Landlord’s right to enter;
- an order for the Landlord to comply with the *Act*; and
- a monetary order for damage or compensation.

The Landlord’s Application for Dispute Resolution was made on October 24, 2019, (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenants had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenants’ Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord's Agent, A.M., attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenants testified that they served their Application package and documentary evidence to their building manager in person on October 25, 2019. A.M. stated that she did not receive it. The Tenants stated that the Landlord's Agent on the teleconference hearing is not their building manager, which could be the reason she did not receive the package.

The Landlord's Agent stated that she served the Tenants with the Landlord's Application package and documentary evidence by registered mail on October 29, 2019. The Tenants confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

#### Preliminary and Procedural 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 due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenants' request to dispute a rent increase, to restrict the Landlord's right to enter the rental unit, an order that the Landlord comply with the *Act*, an order for regular repairs, and a monetary order for damage or compensation are dismissed with leave to reapply.

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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling a 10 Day Notice for unpaid rent (the "10 Day Notice") dated October 3, 2019, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
4. Is the Landlord 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 January 1, 2019. Currently, rent in the amount of \$650.00 is due to be paid to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$325.00 which the Landlord currently holds.

A.M. testified that the Tenants did not pay rent when due on October 1, 2019. A.M. stated that she subsequently issued the 10 Day Notice in the amount of \$650.00, dated October 3, 2019, with an effective vacancy date of October 13, 2019 by posting it to the Tenants' door on October 3, 2019. The Tenants confirmed receipt of the 10 Day Notice on October 3, 2019.

A.M. stated that since serving the 10 Day Notice, the Tenants have not paid any rent towards the outstanding balance and have also failed to pay rent for November and December 2019. A.M. stated that currently, the Tenants have an outstanding balance of unpaid rent in the amount of \$1,950.00.

The Tenants acknowledged that they have not paid any amount of rent to the Landlord for October, November and December 2019. The Tenants stated that they were under the impression that they were not required to pay rent while waiting for this hearing. The Tenants stated that they are able to pay rent, however, would like the Landlord to repair their stove and oven which has not worked since the start of their tenancy.

### 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 Tenants 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.

I find that the Landlord served the 10 Day Notice dated October 3, 2019, with an effective vacancy date of October 13, 2019, by posting it on the Tenants' door on October 3, 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.

I accept that the parties agreed that after service of the 10 Day Notice, the Tenants failed to pay the balance of rent owing in the amount of \$650.00 for October 2019 and have also failed to pay rent when due for November and December 2019. As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days, I find the Tenants are conclusively presumed to have accepted the tenancy end of the tenancy according to the effective date of the 10 Day Notice, October 13, 2019, pursuant to section 46(5) of the Act.

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 Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,950.00. Having been successful, I also find the Landlord is 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 Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,725.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,950.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$325.00</i> )
<b>TOTAL:</b>	<b>\$1,725.00</b>

### Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlord. The Landlord is 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 Landlord is granted a monetary order in the amount of \$1,725.00. 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: December 06, 2019

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Residential Tenancy Branch