



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AVESTA STRATA & PROPERTY MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNR MT RP FFL MNRL-S OPR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- 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 of the *Act*

The tenants requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- 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 to the landlord to make repairs to the rental unit pursuant to section 33.

DD (“landlord”) represented the landlord in this hearing. EB (“tenants”) appeared for the tenants. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord’s application for dispute resolution hearing package (“Application”) as well as the evidence package, which was served by way of registered mail to the tenants. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and landlord’s evidence package

The tenants confirmed that the 10 Day Notice dated November 5, 2019, which was posted on their door. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 10 Day Notice on November 8, 2019, 3 days after posting.

### **Preliminary Issue - Service of the Tenants' Application for Dispute Resolution**

The landlord testified that they had never received the tenants' application for dispute resolution, or any evidence from the tenants. The tenants confirmed that they did not serve the landlord with their application package or evidentiary materials.

Section 89 of the *Act* establishes the following special rules for service of documents.

### ***Special rules for certain documents***

**89** (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

I find that the tenants have not met the requirements of sections 89 of the *Act* for service of their Application and evidence package. As part of the tenants' application is directly related to the same 10 Day Notice in the landlord's application, the tenants' application for cancellation of the 10 Day Notice will be considered. I dismiss the remainder of the tenants' application with leave to reapply.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This 3 year fixed-term tenancy began on April 15, 2017. Both parties confirmed that monthly rent is set at \$3,333.33, payable on the first of every month. The tenants paid a security deposit in the amount of \$1,666.66, which the landlord still holds.

DD testified that she was hired by the owners of the property to manage the property as of October 31, 2019. DD testified that she had attempted to contact the tenants by way of email and phone calls to discuss the payment of outstanding rent, without any success.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on November 5, 2019 for failing to pay outstanding rent in the amount of \$18,666.64. DD testified that the information for the outstanding rent was passed on to her by the owners. The landlord is seeking a monetary order in the amount of \$28,666.63 as the tenants have failed to pay rent from April 1, 2019 through to January 2020 with the exception of one \$8,000.00 payment.

The landlord is also seeking an Order of Possession, plus recovery of the filing fee.

The tenants dispute the landlord's monetary claim, stating that they had paid rent in full up to and including October 2019. The tenants admit that no rent had been paid for the months of November 2019 through to January 2019 as the home is in disrepair.

### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

I have considered the testimony of both parties in the hearing, as well as the evidence submitted for this application. Although the amount the tenants owe is disputed by the tenants, the tenants admit that they have not paid the November 2019, December 2019 rent, or the January 2020 in full as required by the *Act*.

The tenants failed to pay the November 2019 rent in full, within five days of being deemed to have received the 10 Day Notice. I find that the tenants did not have permission to withhold or deduct any rent, and accordingly I find that the tenants have failed to pay the outstanding rent as required by the *Act*.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although I find that the amount of outstanding rent to be disputed on the 10 Day Notice, I find that the 10 Day Notice is still compliant with section 52 of the *Act*. However, I must still consider the validity of the 10 Day Notice, and whether the landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*, which states that “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.”

As it was undisputed that the tenants did owe outstanding rent at the time the 10 Day Notice was issued, I find that the 10 Day Notice is still valid despite the disputed amount indicated on the 10 Day Notice. The tenants’ application to dispute this 10 Day Notice does not relieve the tenants from their responsibility to pay the outstanding rent, nor do I find that the tenants were in possession of any previous orders that had allowed them to withhold or deduct this rent. As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenants did not dispute the fact that they withheld the entire monthly rent for the months of November 2019 through to January 2020. I find that the tenants did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlord's application for \$9,999.99 in unpaid rent. I am not satisfied that the landlord had provided sufficient evidence to support the remaining portion of their claim for the outstanding rent for this tenancy, and accordingly I dismiss the remaining portion of the landlord's application for unpaid rent with leave to reapply.

As the landlord was successful in their claim, I allow the landlord to recover the \$100.00 filing fee for their application.

The landlord continues to hold the tenants' security deposit in the amount of \$1,666.66. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim

### **Conclusion**

I dismiss the tenants' application for repairs with leave to reapply.

I find the 10 Day Notice dated November 5, 2019 to be valid. I therefore grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants and any occupant 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 \$8,433.33 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent for November 2019 through to January 2020 as set out in the table below:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for November 2019	\$3,333.33
Unpaid Rent for December 2019	3,333.33
Unpaid Rent for January 2020	3,333.33
Recovery of Filing Fee	100.00
Less Security Deposit	-1,666.66
<b>Total Monetary Order</b>	<b>\$8,433.33</b>

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.

I dismiss the remainder of the landlord's monetary claim for unpaid rent with leave to reapply.

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: January 7, 2020

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Residential Tenancy Branch