



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPRM-DR CNR

### Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession pursuant to section 55 and a monetary award pursuant to section 67.

The tenants applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified with assistance and the services of an interpreter.

As both parties were present service was confirmed. The parties each confirmed receipt of the other’s materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed additional rent has come owing and that the rental arrears as of the date of the hearing is \$6,600.00. 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 \$4,950.00 to \$6,600.00 as additional rent coming due could be reasonably anticipated.

### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

### Background and Evidence

The parties agree on the following facts. This periodic tenancy began in October 2019. The monthly rent is \$1,650.00 payable on the first of each month. No security or pet damage deposit was paid for this tenancy. A copy of the written tenancy agreement was submitted into evidence. The agreement shows that the named respondents are the tenants of the rental unit.

The landlord testified that the tenants have failed to pay any amount since the tenancy commenced. The landlord issued a 10 Day Notice dated November 2, 2019 which provides that there is an arrear of \$4,125.00 as at November 1, 2019. The landlord testified that they calculated the arrears based on unpaid rent for October and November as well as the failure to pay security deposit in the amount of \$825.00.

The tenant testified that they believe some amount of rent has been paid. They claimed that other occupants of the building have paid rent on their behalf and that they were in the process of applying for financing when the landlord refused to assist in the application process.

### Analysis

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord provided testimony that the tenants have not made any payment under the tenancy agreement. They issued a 10 Day Notice dated November 2, 2019 providing that there is an arrear of \$4,950.00.

The landlord clarified that the amount listed on the 10 Day Notice is inaccurate as it includes the tenant's failure to provide a deposit for this tenancy. As deposits are not rent but simply funds held in trust by a landlord the landlord has no basis to claim unpaid deposits as unpaid rent. The landlord testified that the actual amount of arrears as the date of the 10 Day Notice was \$3,300.00.

The tenants dispute this testimony and claim that others have made some rent payment on their behalf at intermittent times during the tenancy.

The tenant claims that there are other occupants of the rental building who have paid their rent. I find the testimony of the tenant to be illogical, not supported in the documentary evidence, and unbelievable. The tenancy agreement provides that the two named respondents are the tenants under this agreement and they are solely responsible for paying rent when it is due. The tenant claimed that others paid some amount but were unable to say what amounts were paid or when. I do not find the unsupported statement that others in the building have paid rent on their behalf to be either reasonable or to have the air of reality.

Furthermore, the bank statements submitted into evidence by the tenants show a minimal balance and no transfer or cheque issued that corresponds to the amount required for rent payment. Based on the financial documents it is evident that the tenants have made no payment for rent from these accounts for the duration of the tenancy.

I find that there is a rental arrear and that the tenants failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the corrected effective date of the 10 Day Notice, November 12, 2019. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an Order enforceable 2 days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord claims the amount of \$6,600.00 for rental arrears and testified that the tenants have made no payment of rent for the duration of their occupancy of the rental unit. I accept the evidence of the parties that rent in the amount of \$1,650.00 was payable on the first of each month. I accept the evidence of the landlord that the tenants have failed to make any rent payment for October, November and December 2019 and January 2020. As such I find that the landlords have established that there is an arrear of \$6,600.00 and issue a monetary award in that amount accordingly.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants or any occupant 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 landlords' favour in the amount of \$6,600.00. 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: January 2, 2020

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Residential Tenancy Branch