



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL OPRM-DR  
CNR**

### Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55.

The tenants applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46. (two applications filed, disputing two Notices)

The landlord attended the hearing at the appointed time of 11:00 a.m. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants did not attend this hearing although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenants to call in. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she served each of the tenants with the Application for Dispute Resolution on December 18, 2019 by registered mail. Tracking numbers for the mailings are provided on the cover page of this decision. In accordance with sections 89 and 90 of the *Act*, I find the tenants deemed served with the landlord’s application on December 23, 2019, five days after being mailed out.

The landlord testified that she was not served with either of the tenant's two Applications for Dispute Resolution. She was provided with printed copies of the applications from the Residential Tenancy Branch when she attended the office on December 24, 2019.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord provided the following undisputed testimony. The rental unit is an entire house and the fixed one-year tenancy began on September 1, 2019. Rent was set at \$1500.00, payable on the first day of each month. At the commencement of the tenancy, the landlord collected a security deposit of \$750.00 which she continues to hold.

The tenants paid rent for the month of November 2019 by cheque. That cheque was returned on November 6, 2019 by the landlord's bank as insufficient funds. On November 24, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail. This Notice, dated November 23<sup>rd</sup>, indicates the tenant failed to pay \$1,500.00 that was due by November 1, 2019 and provides an effective date of December 9, 2019. The tenants filed to dispute this Notice on November 27, 2019.

The landlord testified the tenants paid rent for the month of December 2019 by cheque. That cheque was also returned by the landlord's bank as insufficient funds. The landlord provided copies of the notices of insufficient funds for both November and December as evidence. On December 8, 2019, the landlord served the tenants with a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. This Notice, dated December 7, 2019, indicates the tenants failed to pay \$1,500.00 that was due by December 1, 2019 and provides an effective date of December 3, 2019. The tenants filed an Application for Dispute Resolution to dispute this notice on December 11, 2019.

The landlord testified that she has received zero rent from the tenants for the months of November and December 2019, including cash payments. As of the end of December, the tenants are \$3,000.00 in arrears. The landlord does not know if the tenants have

moved out of the rental unit, as she has not attended there since filing her application for an order of possession.

### Analysis

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. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenants did not attend the hearing which was scheduled by conference call at 11:00 a.m. As they did not attend, they did not present evidence regarding the merits of their claims for me to consider. Consequently, I dismiss the tenants' applications 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.

I have dismissed the tenant's application and I find that each of the landlord's 10 Day Notices comply with the form and content requirements of section 52. Each are 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 landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notices have passed, I issue an Order of Possession effective two (2) days after service.

I find the tenants paid rent for the months of November and December 2019 by cheque and those cheques were returned as insufficient funds. I accept the landlord's undisputed testimony that the total amount of arrears for this tenancy is \$3,000.00 and I issue a monetary award in the landlord's favour in the amount of \$3,000.00.

As the landlord's application was successful, the landlord is 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 landlord to retain the tenant's security deposit of \$750.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I dismiss the tenants' applications without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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 \$2,350.00 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent November	\$1,500.00
Unpaid Rent December	\$1,500.00
Filing Fees	\$100.00
Less Security Deposit	-\$750.00
<b>Total Monetary Order</b>	<b>\$2,350.00</b>

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 23, 2020

---

Residential Tenancy Branch