



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNR FFL CNR

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 landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.
- a monetary order for unpaid rent or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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.

As the tenant did not attend this hearing, their application is dismissed without leave to reapply.

The landlords gave sworn testimony that on December 20, 2019, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenant by way of registered mail. The landlord included the tracking information and receipt for the package in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on December 25, 2019, 5 days after mailing.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice, with an effective date of November 30, 2019, on November 20, 2019 by way of posting the 10 Day Notice on his door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on November 23, 2019, 3 days after posting.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords testified to the following facts. This fixed-term tenancy began on November 1, 2019. Monthly rent is set at \$1,650.00, payable on the first of every month. The landlords provided a copy of the tenancy agreement in their evidentiary materials. The security deposit was set at \$825.00, but was never paid by the tenant.

The landlords served the tenant with a 10 Day Notice on November 20, 2019 for failing to pay the November 2019 rent. The landlords testified in the hearing that the tenant has not paid any rent for this tenancy, nor the security deposit. The landlord is seeking an Order of Possession, as well as a Monetary Order as outlined in the table below and in the landlord's Application:

Item	Amount
Unpaid Rent for November 2019	\$1,650.00
Unpaid Rent for December 2019	1,650.00
Unpaid Rent for January 2020	1,650.00
Recovery of Filing Fee	100.00
Unpaid Security Deposit	825.00
Total Monetary Order Requested	\$5,875.00

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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 find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, December 3, 2019. As the tenant has not moved out, I find that the landlords are entitled to a 2 day Order of Possession. The landlords

will be given a formal Order of Possession which must be served on the tenant. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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.

The landlords provided undisputed evidence in the hearing that the tenant failed to pay the rent in full for the months of November 2019 through to January 2020. Therefore, I find that the landlords are entitled to \$4,950.00 in arrears for the above period.

The landlords are also seeking recovery of the unpaid security deposit. As Section 20 of the *Act* only allows a security deposit to be collected at the time both parties enter into a tenancy agreement, this portion of the landlords' application is dismissed without leave to reapply.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

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

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenant 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 \$5,050.00 monetary Order in favour of the landlords under the following terms, which allows the landlord to recover unpaid rent and the filing fee.

Item	Amount
Unpaid Rent for November 2019	\$1,650.00
Unpaid Rent for December 2019	1,650.00

Unpaid Rent for January 2020	1,650.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$5,050.00

The tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlords' application to recover the unpaid security deposit is dismissed without 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 23, 2020

Residential Tenancy Branch