



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, FFL;      CNR, OLC, RP, FFT

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- 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 his application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 29, 2019 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 46 minutes.

The landlord's lawyer attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness YP" provided affirmed testimony on behalf of the landlord.

The landlord's lawyer stated that the tenants were each served with separate copies of the landlord's application for dispute resolution hearing package on December 18, 2019, by way of registered mail. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on December 23, 2019, five days after their registered mailings.

The landlord's lawyer claimed that the tenants were served with the landlord's letter, dated January 3, 2020, on January 6, 2020, by way of regular mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's letter on January 11, 2020, five days after their mailings.

The landlord's lawyer said that the tenants were not served with the landlord's affidavit of service. I notified the landlord's lawyer that I could not consider this evidence because it was not served to the tenants, as required.

The landlord's lawyer stated that the tenants were served with the landlord's 10 Day Notice on November 29, 2019, by way of registered mail. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on December 4, 2019, five days after its registered mailing. The tenants indicated that they received the 10 Day Notice on December 2, 2019, by mail, when they applied to dispute it in their application.

#### Preliminary Issue - Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include January and February 2020 rent of \$2,300.00 for each month, totalling \$4,600.00. The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, despite the fact that they did not attend this hearing.

#### Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the RTB *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.*

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

#### Issues to be Decided

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

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

Is the landlord entitled to recover the filing fee for his application?

#### Background and Evidence

The landlord's lawyer stated the following facts. This month-to-month tenancy began on March 1, 2019, when the tenants took over a previous tenancy, but they moved in sometime in February 2019. Monthly rent in the amount of \$2,300.00 is payable on the first day of each month. No security deposit was paid by the tenants. No written tenancy agreement was signed, only a verbal agreement was reached. The tenants continue to reside in the rental unit, as no notice to vacate has been given to the landlord. A previous Residential Tenancy Branch ("RTB") hearing occurred between these parties for this tenancy on October 31, 2019, after which a decision, dated November 1, 2019, was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. The Arbitrator at the previous hearing dismissed the landlord's application to end the tenancy early and did not issue an order of possession. The previous decision indicates that the parties agreed that there was a verbal tenancy that began in March 2019 and the rent was \$2,300.00 each month.

The landlord seeks an order of possession for unpaid rent based on the 10 Day Notice. The 10 Day Notice was issued for unpaid rent of \$17,800.00, due on November 1, 2019. The landlord seeks a monetary order of \$24,700.00 for unpaid rent from March 2019 to February 2020.

The landlord provided a rent ledger, indicating that the following rent payments were made by the tenants: \$800.00 in April 2019, \$830.00 in May 2019, and \$1,270.00 in June 2019, leaving a balance owing of \$1,500.00 for April 2019, \$1,470.00 for May 2019, and \$1,030.00 for June 2019.

Witness YP confirmed that she collected the rent from the tenants on behalf of the landlord and the above payments were made by the tenants. Witness YP stated that no rent payments were made by the tenants and \$2,300.00 was outstanding for each month in March 2019, July to December 2019, and January to February 2020. Witness YP indicated that the tenants sent \$500.00 by e-transfer for July 2019 rent but the tenants cancelled the e-transfer, so the landlord did not collect any rent for that month.

### Analysis

The landlord provided undisputed evidence, as the tenants did not attend this hearing. The tenants failed to pay the full rent due on November 1, 2019, within five days of being deemed to have received the 10 Day Notice. The tenants filed an application to dispute the notice on December 7, 2019, pursuant to section 46(4) of the *Act*. However, the tenants did not appear at this hearing in order to provide their evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on December 16, 2019, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 16, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$24,700.00 from March 2019 to February 2020. Therefore, I find that the landlord is entitled to a monetary order of \$24,700.00 in unpaid rent from the tenants.

Although this hearing occurred on February 4, 2020, I find that the landlord is entitled to one full month's rent for February 2020 of \$2,300.00. I accept the landlord's lawyer's testimony that the landlord has not taken back possession of the unit and the tenants are still residing there. Moreover, rent is due on the first day of each month, as per the landlord's evidence.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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 \$24,800.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 tenants' entire application 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: February 04, 2020

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Residential Tenancy Branch