



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR OLC OPR MNRL FFL

### **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; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- 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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:30 a.m. The landlord attended the hearing with her translator WS, and was 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 landlord, the landlord's translator, 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 tenants did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on December 20, 2019, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants 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 tenants 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 tenants served with the 10 Day Notice, with an effective date of December 17, 2019, on December 7, 2019 by way of posting the 10 Day Notice on tenants' door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notice on December 10, 2019, 3 days after posting.

Although the landlord had applied for a monetary Order of \$2,300.00 in their initial claim, since they applied another \$4,600.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$2,300.00 to \$6,900.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

#### **Preliminary Issue—Amendment to Landlord's Application**

The landlord submitted additional claims that were not included in the original application. The RTB received these claims in the evidentiary package submitted on January 28, 2020 from the landlord.

Rule 4.6 states the following:

***As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each***

*respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.*

*The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.*

***In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.***

I am not satisfied that any amendments have been filed by the landlord for this application in accordance with RTB Rules. As an amendment was not received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment and supporting evidence, the package will be excluded and not considered as part of this application.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

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

Is the landlord 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 January 24, 2019. Monthly rent is set at \$2,300.00, payable on the first of every month. The landlord provided a copy of the tenancy agreement in their evidentiary materials. The security deposit was set at \$1,150.00, but the tenants had only paid \$500.00 towards this amount.

The landlord served the tenants with a 10 Day Notice on December 7, 2019 for failing to pay the December 2019 rent. The landlord testified in the hearing that the tenants have not paid any rent for the months of December 2019 through to February 2020.

The landlord is seeking a Monetary Order for the unpaid rent, as well as an Order of Possession.

### **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 tenants' 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 20, 2019. As the tenants have not moved out, I find that the landlord is entitled to a 2 day Order of Possession. 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.

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 landlord provided undisputed evidence in the hearing that the tenants failed to pay the rent in full for the months of December 2019 through to February 2020. Therefore, I find that the landlord is entitled to \$6,900.00 in arrears for the above period.

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

The landlord continues to hold the tenants' security deposit of \$500.00. 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' entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (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 \$6,500.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover the unpaid rent and the filing fee.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for December 2019	\$2,300.00
Unpaid Rent for January 2020	2,300.00
Unpaid Rent for February 2020	2,300.00
Recovery of Filing Fee	100.00
Less Security Deposit	-500.00
<b>Total Monetary Order</b>	<b>\$6,500.00</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.

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 4, 2020

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Residential Tenancy Branch