



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: CNR, OLC  
                             LL: OPRM-DR, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant has made an Applications for Dispute Resolution on December 10, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 2, 2019 (the “10 Day Notice”); and
- an order that the Landlord comply with the *Act*.

The Landlords’ Application for Dispute Resolution was made on December 16, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on February 7, 2020 as a teleconference hearing. The Landlords appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. 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 Landlords and I were the only persons who had called into this teleconference.

The Landlords testified the Application and documentary evidence package was served to the Tenant by registered mail on December 18, 2019. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on December 23, 2019, the fifth day after the registered mailing.

### Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As no one attended the hearing for the Tenant to present any evidence or testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

### Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession in relation to the 10 Day Notice, pursuant to Section 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlords testified that the tenancy began on August 1, 2019. Rent in the amount of \$1,350.00 is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$675.00, which the Landlords continues to hold. The Landlords stated that the Tenant continues to occupy the rental unit.

The Landlords testified the Tenant did not pay rent in the amount of \$1,350.00 when due on December 1, 2019. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 2, 2019 with an effective vacancy date of December 15, 2019. The Landlords stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on December 2, 2019. The Landlords provided a proof of service in support.

The Landlords testified that since they served the 10 Day Notice, the Tenant has made no payments towards to outstanding rent as indicated on the 10 Day Notice. The Landlords testified that the Tenant failed to pay rent when due for January and February 2020 as well. The Landlords are seeking a monetary order in the amount of \$4,050.00 for unpaid rent for December 2019, January, and February 2020. The Landlords are also seeking an order of possession based on the unpaid rent.

As noted above, the Tenant did not attend the hearing to dispute the Landlords' evidence.

### Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlords' uncontested testimony that the Landlords served the 10 Day Notice dated December 2, 2019 with an effective vacancy date of December 15, 2019, to the Tenant by posting it to the Tenant's door on December 2, 2019. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on December 5, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until December 5, 2019 to either pay the outstanding rent owed to the Landlords in full, or make an Application for dispute resolution.

I accept the Landlords' undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay any amount towards the outstanding balance of rent for December 2019, and has also failed to pay rent when due for January and February 2020. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there and their Application to cancel the 10 Day Notice was dismissed, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, December 15, 2019 pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$4,050.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$3,475.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$4,050.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$675.00</i> )
<b>TOTAL:</b>	<b>\$3,475.00</b>

### Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$3,475.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 07, 2020

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Residential Tenancy Branch