



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Real Property Management Central and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      **FFL, OPRM-DR**

### Introduction

On December 19, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*the tenants' address on the residential tenancy agreement submitted by the landlord does not include the unit number that appears on the Application for Dispute Resolution, the 10 Day Notice, and all other documentation submitted with the Application.*

*I find that this discrepancy in the tenants' address raises a question that can only be addressed through a participatory hearing.*

The tenants did not attend the hearing although I left the teleconference hearing connection open until 9:40 a.m. in order for the tenants to call into this hearing set for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord, the owner of the property and I were the only ones who had called into this teleconference. In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenants.

The landlord attended the hearing and was represented by building manager, BS ("landlord"). The landlord testified he served each of the tenants at their residential address with the Notice of Dispute Resolution Proceedings by registered mail on December 21, 2019. The tracking numbers are listed on the cover page of this decision. The tenants are deemed served with the Notice of Dispute Resolution Proceedings five days after mailing, on December 26, 2019 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on August 15, 2019. This tenancy agreement does not specify a unit number or whether it is an upper or lower unit;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 4, 2019, for \$2,500.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 17, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 12:20 (a.m. or p.m. not indicated) on December 4, 2019; and

A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy and an updated Direct Request Worksheet which depicts unpaid rent for the months of January 2020 and February 2020.

The landlord gave the following affirmed testimony. At the commencement of the tenancy, the landlord collected a security deposit of \$1,250.00 and a pet damage deposit in the amount of \$1,250.00. The rental unit is the upper unit in a residential building with an upper and lower unit. When the tenancy began, only the upper unit was suitable for occupation. Due to this fact, there was no need to differentiate an upper and lower unit on the tenancy agreement. Subsequent to the tenancy beginning, the lower unit was made suitable for occupation and the owner of the property occupies it for his own personal use when he is in town. This is when the landlord's property

management company began differentiating the units on correspondences with the tenant and in documents filed with the Residential Tenancy Branch.

The landlord testified that since serving the Notice on December 4, 2019, he received a government subsidy cheque for a portion of the tenant's rent on January 21, 2020. On that day, the landlord provided the tenants with a receipt for the payment and indicated on the receipt that the payment is for 'use and occupancy only'. No copy of the receipt was provided as evidence. The landlord submits that the tenants are in arrears of rent for the entire months of December, January and February, less the payment of \$1,597.56 he received from the government. Currently the tenants are in arrears for \$5,902.44.

### Analysis

I am satisfied the deficiencies identified by the adjudicator in the interim decision have been addressed as the rental building's lower unit was not suitable for occupation when the tenancy began.

I am satisfied the tenants are deemed served with the 10 Day Notice on December 7, 2019, three days it was posted to the tenants' door in accordance with sections 88 and 90 of the *Act*. I am satisfied the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - a. pay the overdue rent, in which case the notice has no effect, or
  - b. dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - b. must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the Notice before me, I find that the tenants were served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenants are conclusively presumed to have accepted the tenancy

ended on December 17, 2019, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

I have reviewed the tenancy agreement supplied as evidence by the landlord and note that only the tenant, RR is formally named as a tenant and has provided a signature on each of the stated terms of the tenancy agreement. There is no signature line on the tenancy agreement for the second named tenant LP, despite there being one for the guarantor to the agreement, who also didn't sign it. The only place where the second named tenant, LP appears is a handwritten notation on the top of the page with a mark that could be construed as a signature. I am not satisfied LP is a party to the tenancy agreement and I dismiss the landlord's application for a monetary order against her.

The landlord has provided undisputed evidence the tenant RR is in arrears of rent totalling \$5,902.44. Section 26 of the *Act* is clear, 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. I award the landlord monetary compensation in the amount of \$5,902.44 against the tenant, RR.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for this application.

The landlord continues to hold the tenant's security deposit and pet damage deposit in the sum of \$2,500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit and pet damage deposit in partial satisfaction of the monetary claim.

<b>Item</b>	<b>Amount</b>
December 2019 rent	\$2,500.00
January 2020 rent	\$2,500.00
February 2020 rent	\$2,500.00
Less government subsidy payment	(\$1,597.56)
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$2,500.00)
<b>Total</b>	<b>\$3,502.44</b>

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 against the tenant, RR in the amount of **\$3,402.44**.

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 21, 2020

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Residential Tenancy Branch