



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1098686 BC LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR -DR, OPRM-DR, FFL, CNR, OLC, RR, LRE

### 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;
- 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 tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlords right to enter the rental unit or site pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 1:41 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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.

The landlord gave sworn testimony that on March 4, 2020 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served on the tenant by registered mail. The landlord gave evidence that the tenants accepted and signed for the package on March 6, 2020. I am satisfied that the tenants were served in accordance with section 89 of the Act and therefore the hearing proceeded and completed in their absence.

The landlord provided undisputed testimony that the tenants were served with the 10 Day Notice, with a corrected effective date of February 21, 2020, on February 8, 2020 by way of posting it on the tenant's door. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the 10 Day Notice on February 11, 2020, three days after posting.

As the tenants chose not to participate in today's hearing, I hereby dismiss the tenants' application in its entirety without leave to reapply. I address the landlord's application and my findings below.

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 landlord gave **undisputed testimony** regarding the following facts. This one year fixed-term tenancy began on October 1, 2019, with monthly rent set at \$2,650.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$1,325.00. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice on February 8, 2020. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service that that the noticed was posted on the tenant's door. The landlord testified that the tenants have not paid any rent since the 10 Day Notice was issued.

The landlord testified that the tenants made some small partial payments but almost immediately fell behind in paying the rent after move in. The landlord advised that as of today the tenants owe \$8550.00 in rent. The landlord is seeking an Order of Possession, as well as a Monetary Order for \$8550.00 and the recovery of the filing fee for a total monetary claim of \$8650.00.

### 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.

**In the absence of sufficient disputing evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.** 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, February 21, 2020. 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.

The landlord provided undisputed evidence that the tenants failed to pay the rent in full for the months of December 2019 to today. Therefore, I find that the landlords are entitled to \$8550.00 in arrears for the above period.

The landlords continue to hold the tenant's security deposit in the amount of \$1,250.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenants.

### Conclusion

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

I grant an Order of Possession to the landlords 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.

The landlord has established a claim for \$8650.00. I order that the landlord retain the \$1325.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$7325.00. This order may be filed in the Small Claims 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: March 19, 2020

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Residential Tenancy Branch