



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 46 and 55 of the *Act*;
- monetary compensation for unpaid rent pursuant to section 67 of the *Act*;
- filing fee pursuant to section 72 of the *Act*.

The landlord's application was initially a Direct Request but was convened to a participatory hearing as per the interim decision dated February 3, 2020

The landlord AN and Property Manager DL attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenants did not attend this hearing.

The landlord testified the tenants were served the Notice of Dispute Resolution together with the evidentiary package via serving the Notice on the door on January 3, 2020. The landlord provided evidence of the Notice posted in the evidentiary materials submitted to the Residential Tenancy Branch.

Rule of Procedure 7.3 states:

### 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. I proceeded with the hearing.

In the original Direct Request Application, the landlord was seeking the sum of \$2,752.40 comprising of unpaid rent for the months of November, December and January 2020. In the hearing the landlord sought to increase the monetary claim up to the amount of \$4088.96 to include rent for February 2020.

The landlord was not organized with his documents. It took a few minutes to decipher dates, the amounts due and to understand what the landlord was translating with the property manager.

### Amendment

The Residential Tenancy Branch rules of procedure rule 4.2 states that amending an application at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for February 2020.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause 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 testified that the tenancy began on February 1, 2015. The monthly rent in the amount of \$1,336.56 was payable each month and a security deposit of \$587.50 was paid by the tenants and continues to be held in Trust.

The landlord testified the tenants have not paid the full rent for the months of December to February 2020 and that the rent for March was due shortly. The tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated January 3, 2020 by posting to the window and rental unit door on January 3, 2020 and that this service was witnessed by a third party. The landlord provided a Proof of Service document signed and dated January 20, 2020.

The Notice indicates an effective move-out date of January 13, 2020

The grounds to end the tenancy cited in the Notice were:

- 1) the tenants owe the sum of \$2,752.40 rent for the month of November(partial), December 2019 and January 2020.

The tenants did not attend the hearing to present any submissions in relation to the Notice and the tenants did not upload any evidence disputing the landlord's Notice.

### Analysis

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.

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.

Section 46(5) says that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the landlord's undisputed testimony and the notice before me, I find that the tenants were served with a valid Notice. The tenants did not file an application to dispute the Notice within 5 days of its receipt or pay the rent due.

I am satisfied that the Notice complies with section 52 of the *Act*. Therefore, the tenants are conclusively presumed pursuant to section 46(4) of the *Act* to have accepted that the tenancy ended on the effective date of January 13, 2020.

As the tenants have failed to vacate the rental unit, I find that the landlord is entitled to an order of possession, pursuant to section 46 and 55 of the *Act*.

Pursuant to sections 67 of the *Act*, I order that the tenants pay the landlord \$3,501.46 representing the rent owed from November 2019 to February 2020 deducting the security deposit of \$587.50 held in Trust.

As the landlord has been successful in this application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

I grant a monetary order for the sum of \$ 3601.46 for the unpaid rent and \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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*.

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 10, 2020

---

Residential Tenancy Branch