



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, OPR-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 unpaid rent 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 BH attended the hearing via conference call with her son JH, in the capacity of Interpreter. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenants did not attend this hearing.

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.

The landlord affirmed that she forwarded the Application for Dispute Resolution and evidentiary package to each of the tenants via by Canada Post Registered mail on March 12, 2020. I find this satisfies the service requirements pursuant to sections 88 & 89 of the *Act*. Copy of the Canada Post Tracking numbers are listed on the first page of this decision.

This hearing was originally scheduled as a Direct Request but was convened to a participatory hearing on the basis that there was confusion as to whether a 10 Day Notice or a One Month Notice to End Tenancy was served.

In the original monetary worksheet, the landlord was seeking the sum of \$1,050.00 for the month of January 2020. In the hearing the landlord sought to increase the monetary claim to include the rent owed for February, March and April. A further total of \$3,150.00 to the claim.

### Amendment

The Residential Tenancy Branch Rules of Procedure rule 4.2 states that an application may be amended 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, 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 she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant.

Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for February, March and April. The total amount sought at this hearing is for the sum of \$4,200.00

### Preliminary - Amendment

The landlord affirmed in testimony that a 10 Day Notice was served on the tenant and not a One Month Notice to End Tenancy. I find that a 10 Day Notice to End Tenancy was served on the tenants based on the landlord's testimony and the copy of the 10 Day Notice filed in evidence.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession 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

This tenancy commenced on October 15, 2019 on a fixed term tenancy. The landlord testified that monthly rent in the amount of \$1,050.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit of \$525.00 at the beginning of the tenancy which is held in Trust by the landlord.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated January 1, 2020 by personally serving on the tenants and leaving a copy on the basement door.

The Notice indicates an effective move-out date of January 16, 2020.

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

- 1) the tenants owe the sum of \$ 1,050.00 for the month of January 2020.

The landlord testified that she is seeking an Order of Possession as the tenant has not vacated the property but does not wish to include the security deposit as she is concerned about any pending damage to the property and wishes to reserve her right to claim against the deposit when the tenancy ends, if necessary.

The tenants did not attend the hearing to present any submissions in relation to the Notice and the tenant 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 tenants are 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 testimony and the notice before me, I find that the tenants were served with a valid Notice. The tenants did not pay the rent or file an application to dispute the Notice within 5 days of its receipt. 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 16, 2020. Accordingly:

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant.

Pursuant to sections 67 of the *Act*, I order that the tenants pay the landlord the sum of \$4,200.00 representing the rent owed from January to April 2020.

As the landlord has been successful in this application, I find that she is entitled to recover the \$100.00 reimbursement of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

I grant a monetary order for the sum of \$4,300.00 for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

The landlord is provided with this Order in the above terms and 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.

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*.

Dated: April 27, 2020