



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*, and
- authorization to recover the filing fee from the tenant, pursuant to section 72 of the *Act*.

The landlord was represented by DB (the landlord). Tenant LH also attended. The landlord affirmed the notice of hearing and evidence (the materials) were served by registered mail sent on March 21, 2020. The tracking number is on the cover page of this decision. The tenant affirmed she did not receive the materials and she learned about the hearing because she called the Residential Tenancy Branch. I find the landlord served the materials in accordance to the Rule of Procedure 3.14 and section 89(2)(b) of the *Act*. The tenant is deemed served the materials on March 26, 2020, in accordance with section 90(c) of the *Act*.

The tenant affirmed she served her evidence by e-mail on April 07, 2020. The landlord affirmed he received the tenants' evidence on April 08, 2020. In accordance with section 71(2)(c) of the *Act*, I find the landlord was sufficiently served the tenants' evidence on April 08, 2020.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$1,050.00 in unpaid rent to include an additional \$450.00 for the balance of unpaid rent of April 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$1,500.00.

### Issues to be Decided

- Is the landlord entitled to obtain an order of possession, pursuant to sections 46 and 55 of the Act?
- Is the landlord entitled to a monetary order for unpaid rent pursuant to sections 26 and 67 of the Act?
- Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained the parties it is their obligation to present the evidence submitted.

Both parties agreed the tenancy started on June 01, 2016. Monthly rent of \$900.00 is due on the first day of the month. At the outset of the tenancy a security deposit of \$450.00 was collected by the landlord and he still holds it in trust. The tenancy agreement was submitted into evidence.

On January 10, 2020 the landlord issued the tenants two 10 Day Notice to End Tenancy for Unpaid Rent (the Notices) by registered mail on January 11, 2020. The tracking number is on the cover page of this decision. The tenant confirmed she received both Notices on February 26, 2020.

The landlord submitted copies of both Notices dated January 10, 2020. The first one is for \$900.00 due on December 01, 2019 and the second one is for \$900.00 due on January 01, 2020. Both Notices have an effective date of January 25, 2020. The

landlord affirmed that the value of amount owing for December 01, 2019 is not accurate on the Notice as the amount owing was only \$150.00 when the Notice was issued.

The landlord affirmed the tenant only paid \$750.00 for rent in December 2019 and submitted a payment of \$250.00 on January 23, 2020 and another of \$2,250.00 on March 09, 2020. The total arrears, including April 2020 rent, is \$1,250.00.

The landlord submitted receipts for use and occupancy for the payments received after the Notices were issued. A ledger issued on February 14, 2020 and a monetary order (RTB form 46) indicating arrears of \$1,000.00 were also submitted into evidence. Registered mail receipts were submitted by the landlord as well.

The tenant affirmed she is in arrears, but she does not know how much she owes. The tenant affirmed a cheque for \$750.00 was sent to the landlord in March for April's rent. The tenant affirmed she has a pay stub demonstrating the cheque for April's payment was sent to the landlord, but this document was not submitted into evidence. The tenant also affirmed the cheques for January, February and March were only mailed to the landlord in March.

The landlord affirmed the tenant has always been in arrears since November 2018. The landlord receives the cheque for \$750.00 before the first day of the month, but the remaining balance of \$150.00 is always paid late. Sometimes the tenant only pays the remaining balance after a few months.

The tenant affirmed she has a verbal agreement with the landlord to be able to pay the balance after the first day of the month.

### Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the uncontested evidence that monthly rent is \$900.00 due on the first day of the month.

The Notices are dated January 10, 2020 and were mailed to the tenants by registered mail on January 11, 2020. I find the tenants were deemed served with the Notices on January 16, 2020, five days after they were mailed, in accordance with section 88(c) and 90 (a) of the Act.

The Notice for December's rent was not properly completed, as the landlord affirmed the value of amount owing for December 01, 2019 is not accurate on the Notice. The amount owing was only \$150.00 when the Notice was issued. For this reason, this Notice is cancelled.

The Notice for January's rent indicates arrears of \$900.00 since January 01, 2020 and the effective date of the Notice is January 25, 2020. The form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. The tenants did not dispute the Notice and are conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, January 26, 2020 (Section 53(2) of the Act).

#### Monetary award claim

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the undisputed testimony of both parties and the tenancy agreement submitted into evidence, I find monthly rent is \$900.00 due on the first day of the month.

I accept the landlord's testimony that the tenant is in arrears and the total rent amount owing is \$1,250.00 for the balance of March (\$350.00) and the month of April (\$900.00). The tenant affirmed she is in arrears, but did not specify how much she is owing. The tenant affirmed the landlord received a cheque for \$750.00 in March 2019 for April's rent. However, the tenant did not provide any evidence this cheque was received by the landlord and was vague, not providing a date this cheque was received or cashed by the landlord.

I find the tenant has failed to prove, on a balance of probabilities, the payment of \$750.00 in March 2020 for April's rent.

I find the tenant owes the landlord \$350.00 for the balance of March 2020 rent and \$900.00 for the month of April 2020, totalling \$1,250.00.

As the landlord was successful in his application, he is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. I order the landlord to retain the tenant's security deposit of \$450.00 in partial satisfaction of the unpaid rent. Thus, the total monetary award is \$900.00.

In summary:

Balance of March 2020 rent	\$350.00
April 2020 rent	\$900.00
Filing fee	\$100.00
Total:	\$1,350.00
Minus security deposit	-\$450.00
<b>Total:</b>	<b>\$900.00</b>

### Conclusion

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.

Pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's security deposit of \$450.00 in partial satisfaction of unpaid rent and grant the landlord a monetary order in the amount of \$900.00.

The landlords is provided with this order in the above terms and the tenant must be served with **this order** as soon as possible. Should the tenant 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.

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 21, 2020