



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OP, FFL

### Introduction

This hearing originated as a direct request proceeding. A participatory hearing was ordered in an Interim Decision dated February 20, 2020. This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords testified that they served the tenant with the Interim Decision and the Notice of Reconvened Hearing, as directed in the Interim Decision, via registered mail on March 4, 2020. The tenant testified that he received the above documents via registered mail but could not recall on what date. I find that the tenant was served in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to authorization to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2020 and is currently ongoing. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. Rent is to be paid by e-mail money transfer. A security deposit of \$600.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on February 2, 2020 she left a 10 Day Notice to End Tenancy for Unpaid Rent in the tenant's mailbox (the "10 Day Notice"). The 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,250.00 that was due on February 1, 2020. The effective date of the 10 Day Notice is February 11, 2020. The tenant testified that he received the 10 Day Notice on February 5, 2020.

The tenant testified that he did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

The landlords testified that the tenant has not paid any rent for February, March or April 2020. The tenant testified that the RCMP seized all of his cash, so he was not able to pay his rent. The tenant testified that he attempted to get his rent to the landlord via the Ministry and another charitable organization, but the landlords were not helpful. The tenant agreed that he has not paid any rent to the landlords for February, March or April 2020.

The landlords testified that they received one telephone call from the Ministry who asked them if they were pursuing the 10 Day Notice. When they responded in the affirmative, the call ended, the Ministry did not make an offer to pay the tenants rent.

The landlords testified that on the tenancy agreement and the 10 Day Notice, the landlords accidentally put the street number before the unit number. Both parties testified that they were aware that the unit number should come before the street number.

### Analysis

I find that the 10 Day Notice was served on the tenant in accordance with section 88 of the *Act*. Pursuant to section 68 of the *Act*, I amend the 10 Day Notice to state the unit number of the subject rental property before the street number. I find that the tenant knew or ought to have known that the unit number and street number were accidentally inverted on the 10 Day Notice. I find that, in the circumstances, it is reasonable to amend the notice. I find that the amended notice meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states that 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) of the *Act* states that 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.

Section 46(5) of the *Act* states 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

- (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 testimony of both parties, I find that the tenant did not pay any rent after receiving the 10 Day Notice. It is the tenant's responsibility to pay rent on time, not the landlords responsibility to liaise with the Ministry or charitable organizations to collect rent. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises on the corrected effective date of the 10 Day Notice, that being February 15, 2020. As the tenant has not vacated the subject rental property, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be

served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in their application for dispute resolution, they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlords, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain \$100.00 from the tenant's security deposit.

### Conclusion

Pursuant to sections 46 and 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords are entitled to retain \$100.00 from the tenant's security deposit.

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 28, 2020

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Residential Tenancy Branch