



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.  
and [tenant name suppressed to protect  
privacy]

## DECISION

Dispute Codes

**OPR-DR, OPRM-DR, FFL**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"):

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by their agent (the "landlord") who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated February 25, 2020 was served on the tenants by posting on the rental unit door on that date. The landlord provided a signed Proof of Service form as evidence. Based on the undisputed evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed served with the landlord's 10 Day Notice on February 28, 2020, three days after posting.

The landlord testified that the landlord's application for dispute resolution dated March 10, 2020 and evidence were sent to each of the tenants by registered mail sent on March 24, 2020. The landlord provided 2 valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that each tenant is deemed served with the landlord's materials on March 29, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed additional rent has come due and the total arrear as of the date of the hearing is \$7,200.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$4,800.00 to \$7,200.00 as the additional amount of rent coming due could be reasonably anticipated.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?  
Is the landlord entitled to a monetary award as claimed?  
Is the landlord entitled to recover the filing fee from the tenants?

#### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. The monthly rent for this periodic tenancy is \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the landlord. No written tenancy agreement was completed.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$4,800.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant has not made payment since the 10 Day Notice was issued nor are they aware of the tenant having filed a dispute of the 10 Day Notice. The landlord testified that the tenant has failed to pay rent for July and December, 2019 and January, February, March and April, 2020. The landlord said that the total amount owing for the tenancy as of May 11, 2020, the date of the hearing, is \$7,200.00.

#### Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that there was an enforceable tenancy agreement between the parties wherein the tenants were obligated to pay the monthly rent in the amount of \$1,200.00. I accept that there was an arrear of \$4,800.00 as at February 25, 2020, the date of the 10 Day Notice. I accept the landlord's evidence that the tenants failed to pay the full rent

due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, March 10, 2020.

The 10 Day Notice is dated February 25, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$7,200.00. I issue a monetary award in the landlord's favour for unpaid rent of \$7,200.00 as at May 11, 2020, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$600.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I grant an Order of Possession to the landlord effective **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.

I issue a monetary order in the landlord's favour in the amount of \$6,700.00, allowing the landlord to recover the unpaid rent and filing fee and retain the security deposit for this tenancy.

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.

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: May 11, 2020

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Residential Tenancy Branch