



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on March 5, 2020 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The hearing was scheduled for 11:00 AM on May 8, 2020 as a teleconference hearing. The Landlord appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package were served to the Tenants by registered mail on March 16, 2020. The Landlord provided a copy of the registered mail receipts in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application, and documentary evidence on March 21, 2020, the fifth day after their registered mailing.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began about 11 years ago. Currently, the Tenants are required to pay rent in the amount of \$1,450.00 which is due to be paid to the Landlord on the first day of each month. The Tenants did not pay a security or pet damage deposit, and the Tenants continue to occupy the rental unit.

The Landlord testified the Tenants did not pay rent when due in January and February 2020. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 10, 2020 (the "10 Day Notice") with an effective vacancy date of February 20, 2020. At that time, rent in the amount of \$2,900.00 was outstanding. The Landlord testified he served the 10 Day Notice to the Tenants by posting it to the Tenants' door on February 10, 2020. The Landlord provided a copy of the 10 Day Notice and a proof of service in support.

The Landlord stated that after he served the 10 Day Notice, the Tenants paid a portion of the outstanding rent on February 13, 2020 in the amount of \$2,600.00. The Landlord stated that the Tenants failed to pay the remaining \$300.00 to the Landlord. As such, the Landlord is seeking to end the tenancy based on the unpaid rent, as well as obtain monetary compensation in the amount of \$300.00. If successful, the Landlord is also seeking the return of the filing fee paid to make the Application.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

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.

The Landlord served the Tenants with the 10 Day Notice dated February 10, 2020 with an effective vacancy date of February 20, 2020 by posting it to the Tenants' door on February 10, 2020. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received 3 days later. I find the Tenants are deemed to have received the 10 Day Notice on February 13, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenants 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. Therefore, the Tenants had until February 18, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenants paid \$2,600.00 of the \$2,900.00 of rent owed to the Landlord on February 13, 2020. As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenants disputed the 10 Day Notice, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, February 23, 2020 pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$300.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$400.00.

### Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$400.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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