



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNRL

### 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 landlords applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*; and
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*.

The hearing on April 11, 2020 was adjourned until today to extend the time for the tenants to prepare their evidence and for the landlord to respond to the tenants' evidence. At the adjourned hearing the tenants affirmed they received the application and the evidence (the materials) on March 25, 2020 in person. I find the tenants were properly served the landlord's application in accordance with section 89(1)(a) of the *Act*.

A notice to reconvene the hearing was sent by the Residential Tenancy Branch to both parties. Although I left the connection open until 11:11 A.M. to enable the tenants to call into this teleconference scheduled for 11:00 A.M., the tenants did not attend this hearing and did not provide any evidence. Landlord TB (the landlord) attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I proceeded with the hearing in the absence of the tenants, as per Rule of Procedure 7.3.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$5,700.00 in unpaid rent to include an additional \$1,900.00 for the unpaid rent of June 2020.

The increase in the landlords' 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 landlords' monetary claim for unpaid rent to \$7,600.00.

Issues to be Decided

Are the landlords entitled to:

1. an order of possession, pursuant to sections 46 and 55 of the Act?
2. a monetary order for unpaid rent pursuant to sections 26 and 67 of the Act?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlord testified the tenancy started on December 01, 2018. Monthly rent is \$1,900.00 and is due on the first day of the month. The landlord still holds a \$950.00 security deposit collected at the outset of the tenancy. A tenancy agreement was submitted into evidence.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated February 03, 2020, for \$1,900.00 in unpaid rent. The effective date is February 14, 2020. The Notice was served in person on February 03, 2020.

The landlord affirmed on February 10, 2020 the tenant paid \$1,900.00 and a usage and occupancy receipt was issued. The tenants did not pay rent in March, April, May and June 2020. The total arrears are \$7,600.00. The landlord affirmed the tenants continue to reside at the rental unit.

A witnessed Proof of Service of Notice to End Tenancy form (RTB-34) attesting the Notice was served in person on February 03, 2020 was submitted into evidence. A monetary order worksheet dated March 31, 2020 was submitted into evidence.

### Analysis

I accept the landlord's uncontested testimony that the tenants must pay monthly rent of \$1,900.00 on the first day of the month and have been in arrears for \$7,600.00 for unpaid rents of March, April, May and June 2020. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

The Notice is dated February 03, 2020 and was served in person on that date. I find the tenants were served in accordance with section 88(a) of the Act.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

The tenants did not file an application to dispute the Notice and are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, February 14, 2020. The payment of February's rent occurred after the timeline of section 46(4) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlords. I order the landlords to retain the \$950.00 security deposit.

In summary:

|            |            |
|------------|------------|
| March rent | \$1,900.00 |
| April rent | \$1,900.00 |
| May rent   | \$1,900.00 |
| June rent  | \$1,900.00 |
| Sub-total  | \$7,600.00 |

|                       |                   |
|-----------------------|-------------------|
| Security deposit      | -\$950,00         |
| <b>Monetary award</b> | <b>\$6.650,00</b> |

I warn the tenants that they may be liable for any costs the landlords incur to enforce the order of possession.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the landlords 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 section 67 of the Act, I authorize the landlords to retain the \$950.00 security deposit and grant the landlords a Monetary Order in the amount of \$6,650.00.

The landlords are 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.

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: June 04, 2020

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Residential Tenancy Branch