



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

On May 5, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords attended the teleconference hearing; however, the Tenants did not. The Landlords provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding using registered mail sent to the Tenants on May 6, 2020. The Landlord testified that the Canada Post website indicates the mail was delivered. The Landlords provided a copy of the registered mail tracking number.

I find that the Tenants were served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*.

The Landlords was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

### Issues to be Decided

- Are the Landlords entitled to an order of possession due to unpaid rent?
- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to keep the security deposit towards unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlords testified that the tenancy began on February 15, 2018, on a month to month basis. Rent in the amount of \$2,000.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$1,000.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants have regularly failed to pay the rent owing under the tenancy agreement. The Landlords testified that the Tenants have been making partial payments of rent since the middle of 2019.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 13, 2020, ("the 10 Day Notice"). The 10 Day Notice indicates the Tenants have failed to pay rent of \$5,600.00 due on February 1, 2020. The effective date of the 10 Day Notice is February 23, 2020.

The Landlord testified that the 10 Day Notice was served in person on February 13, 2020. The Landlord testified that the Tenants refused to accept the Notice, so it was posted to the Tenants' door on February 13, 2020.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenants made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenants have not made any rent payments to the Landlord since the 10 Day Notice was issued.

The Landlord provided copies of rent receipts which show partial rent payments received by the Landlord dating back to March 2019. The Landlords documentary evidence indicates the Tenants paid \$12,000.00 to the Landlord between March 2019 to February 1, 2020.

<u>Date</u>	<u>Rent Payment Received by Landlord</u>
March 15, 2019	\$1,000.00
May 23, 2019	\$600.00
June 4, 2019	\$300.00
June 22, 2019	\$200.00
June 28, 2019	\$1,000.00
June ? 2019	\$500.00

August 22 2019	\$2000.00
September 20, 2019	\$500.00
September 27, 2019	\$1,000.00
October 21, 2019	\$200.00
October 23, 2019	\$1,300.00
November 22, 2019	\$1,500.00
December 20 2019	\$1,000.00
January 27, 2020	\$800.00
February 1, 2020	\$100.00

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$20,000.00. The Landlord testified that the Tenants are still living in the rental unit.

The Landlord is also seeking to keep the security deposit of \$1,000.00 in partial satisfaction of the claim for unpaid rent.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the rent owing under the tenancy agreement and listed in the 10 Day Notice within five days of receiving the Notice, and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. 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 have reviewed the tenancy agreement and find that the Tenants owes \$2,000.00 each month for rent.

Between the 12-month period from March 1, 2019 to February 1, 2020 I find that the Tenants owed the Landlord rent of \$24,000.00. I accept the Landlords documentary evidence that the Landlord only received \$12,000.00 during this period. I find that the Tenants owe the Landlord \$12,000 in unpaid rent.

I also find that the Tenants failed to pay the rent owing under the tenancy agreement for the months of March 2020; April 2020; May 2020; and June 2020. I find that the Tenants owe the Landlords \$8,000.00 rent for these months.

In total, I find that the Tenants owe the Landlord \$20,00.00 in unpaid rent for all of the above listed months.

I order that the Landlord can keep the security deposit in the amount of \$1,000.00 in partial satisfaction of the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$20,100.00 comprised of \$20,000.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit and pet damage deposit of \$1,000.00 against the award of \$20,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$19,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date on the Notice.

I order that the Landlord can keep the security deposit of \$1,000.00 in partial satisfaction of the award.

The Tenants owes the Landlord \$19,100.00 in unpaid rent.

The Landlord is granted an order of possession under section 55 of the Act effective two (2) days after service on the Tenants and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$19,100.00.

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial

Order provides that a Landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the Act.

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 09, 2020

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Residential Tenancy Branch