



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

On August 5, 2020 the Landlords submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent;
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the Tenant acknowledged receipt of the Landlords’ Application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not provide any documentary evidence in preparation for the hearing.

The parties were 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. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?

2. Should the Landlords be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the Act?
3. Are the Landlords entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed that the tenancy began on June 1, 2015. Currently, rent in the amount of \$910.00 is due to be paid to the Landlords each month. The Tenant paid a security deposit in the amount of \$445.00, which the Landlords continue to hold. The Tenant continues to occupy the rental unit.

The Landlord testified the Tenant has had difficulties paying rent in full during the majority of the tenancy. The Landlord stated that she has given the Tenant ample opportunity to pay the outstanding balance of rent owed, however, currently, the Tenant owes the Landlord \$13,880.00 in unpaid rent dating back to December 2015. The Landlord provided a rent ledger in support of the unpaid rent. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 24, 2020 (the "10 Day Notice") with an effective vacancy date of August 4, 2020 in relation to the unpaid rent. The Landlord stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on July 25, 2020. The Landlord provided a proof of service in support.

The Tenant confirmed receiving the 10 Day Notice on July 25, 2020 and confirmed that she did not dispute the 10 Day Notice. The Tenant acknowledged that she has not paid the outstanding balance of rent in the amount of \$13,880.00 due to her financial difficulties.

As such, the Landlords are seeking an order of possession based on the unpaid rent as well as a monetary order for the outstanding balance of rent in the amount of \$13,880.00. If successful, the Landlords are also seeking the return of the filing fee.

### Analysis

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this 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. As I do not have any evidence before me that the

Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

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.

I accept that the Landlord served the 10 Day Notice dated July 24, 2020 with an effective vacancy date of August 4, 2020 to the Tenant by posting it to the Tenant's door on July 25, 2020. As the Tenant confirmed receipt of the 10 Day Notice on July 25, 2020, I find that the 10 Day Notice was sufficiently served in accordance with the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant 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 Tenant had until July 30, 2020 to either pay the outstanding rent owed to the Landlords in full, or make an Application for dispute resolution. The Tenant did neither.

As the Tenant 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 Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, August 4, 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 as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenant, 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 Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$13,880.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$13,535.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$13,880.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$445.00</i> )
<b>TOTAL:</b>	<b>\$13,535.00</b>

### Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$13,535.00. The monetary order should be served to the Tenant as soon as possible and 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: September 14, 2020

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Residential Tenancy Branch