



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with adjourned Direct Request Application filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for an order of possession to enforce 10-Day Notice for Unpaid Rent (the Notice) issued on September 24, 2020, a monetary order for unpaid rent or utilities, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenants by registered mail on July 9, 2020, the Landlord provided a tracking number as proof of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenants had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present her 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

- Is the Landlord entitled to an Order of Possession, pursuant to section 46 of the *Act*?
- Is the Landlord entitled to monetary order for unpaid rent?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

The Landlord testified that the tenancy began on March 1, 2020, as a one-year fixed tenancy; rent in the amount of \$1,850.00 is to be paid by the first day of each month and that the Tenants had paid a \$900.00 security deposit at the outset of this tenancy.

The Landlord testified that they served the Tenants with the Notice to end tenancy by posting it to the front door of the rental unit on September 24, 2020, with an effective date of October 7, 2020. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that they had a previous hearing regarding this tenancy and had received an order of possession as a result of those proceedings.

The Landlord testified that as of the date of this hearing the Tenants had not paid the rent for July, August, September and October 2020. The Landlord is requesting a Monetary Ordre to enforce her Notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

***Landlord's notice: non-payment of rent***

**46** (1) *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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*  
*(a) pay the overdue rent, in which case the notice has no effect,*  
*or*  
*(b) dispute the notice by making an application for dispute resolution.*

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*  
*(b) must vacate the rental unit to which the notice relates by that date.*

I accept the undisputed testimony of the Landlord, and I find that the Tenants did not pay the rent or dispute the Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I accept the Landlord testimony, that they have already received an order of possession for this tenancy. As an order of possession has already been issued to end this tenancy, I find that another order of possession is not required in this case.

Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

***Rules about payment and non-payment of rent***

**26** (1) *A 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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

(4) *Subsection (3) (a) does not apply if*

*(a) the landlord has a court order authorizing the action, or*

*(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the undisputed testimony of the Landlord that the rent has not been paid for July, August, September and October 2020 for this tenancy. I find that the Tenants breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has proven their entitlement to a monetary order for the unpaid rent for July, August, September and October 2020. I award the Landlord a monetary order in the amount of \$7,400.00, and I authorize to the Landlord to keep the security deposit for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$6,600.00; comprised of, \$7,400.00 for the outstanding rent, \$100.00 for the recovery of the filing fee, less the \$900.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act and grant the Landlord a **Monetary Order** in the amount of **\$6,600.00**. The Landlord is 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: October 30, 2020

---

Residential Tenancy Branch