



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNR OLC RR FF  
Landlord: OPR MNR MNSD FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 8, 2021. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlords attended the hearing along with their legal counsel. However, the Tenant did not appear. The Landlords stated that they served the Tenant with their application and Notice of Hearing by sending it via registered mail on October 23, 2020. Proof of mailing was provided into evidence. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received this package on October 28, 2020, five days after it was mailed.

The Landlords stated they sent their evidence package by registered mail on December 9, 2020. Proof of mailing was provided. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received this package on December 14, 2020, 5 days after it was mailed.

I find the Landlords sufficiently served their application, Notice of Hearing, and evidence for the purposes of this hearing.

The Landlord was provided the 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.

### Preliminary and Procedural Issues

The hearing was by telephone conference and began promptly, as scheduled, at 11:00 AM Pacific Time on January 8, 2021, as per the Notice of a Dispute Resolution Hearing provided to the parties. The line remained open while the phone system was monitored for 10 minutes and the only participant who called into the hearing during this time was the Landlords who were ready to proceed. The Landlords testified that the Tenant continues to occupy the rental unit and still owes rent.

After the ten minute waiting period, the Tenant's application was **dismissed in full, without leave to reapply**, as she failed to attend to support her application.

Section 55 of the *Act* applies and states:

#### **Order of possession for the landlord**

**55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if**

**(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**

**(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlords meets the requirements for form and content and the Landlord is entitled to an order of possession, effective 2 days after service.

As the Tenant's application is dismissed, in full, the only remaining issue left is whether or not the Landlords are entitled to a monetary order for unpaid rent. The Landlords stated that rent has continued to accrue since the time they filed their application, and they request that the total be amended to reflect this new amount.

I turn to the following Rules of Procedure (4.2):

**Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlords to amend their application to include rent that has accrued since the original application date.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlords testified that rent in the amount of \$3,200.00 is due on the first of each month. The Landlord stated that the tenancy started on October 1, 2020, and the Tenant had financial issues from the start. The Landlord stated that the Tenant was supposed to pay \$1,600.00 as a security deposit, prior to the start of the tenancy. However, she only sent \$1,300.00 on September 30, 2020. The Landlords stated that they never received any other money for the deposit, but they confirmed that they still hold the \$1,300.00.

The Landlords stated that the Tenant was supposed to pay \$3,200.00 in rent as of October 1, 2020. However, the Landlords stated that the Tenant's rent cheque bounced in early October. Subsequently, the Tenant paid \$1,500.00 via e-transfer on October 6, 2020, but she was still \$1,700.00 short for October rent. The Landlord stated that they then issued the Tenant a 10 Day Notice to End Tenancy on October 8, 2020, and no rent has been paid since that time.

The Landlords stated that at this point, the Tenant still owes \$1,700.00 in rent for October 2020, \$3,200.00 in rent for November, \$3,200.00 in rent for December, and \$3,200.00 in rent for January 2021, totalling \$11,300.00. The Landlords also pointed out that the Tenant also owe \$20.00 per month in late rent fees, as per the term in the addendum of the tenancy agreement (4 x \$20.00), plus the filing fee.

In summary, the Landlords are seeking \$11,480.00.

### Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$11,380.00 in rent and late fees.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent and late fees	\$11,380.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Landlord	(\$1,300.00)
<b>TOTAL:</b>	<b>\$10,180.00</b>

Conclusion

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$10,180.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: January 08, 2021

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Residential Tenancy Branch