



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR-PP, OPRM-DR, FFL;    CNR-MT, DRI, LAT, FFT

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlords' 10 Day Notice, pursuant to section 46;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The two landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords stated that the tenant was served with the landlords' application for dispute resolution hearing package on December 18, 2020, by way of registered mail. The landlords provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on December 23, 2019, five days after its registered mailing.

The landlords confirmed that the tenant was personally served with the landlords' 10 Day Notice on November 5, 2020. The landlords confirmed that they were both present and witnessed this service. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlords' 10 Day Notice on November 5, 2020.

#### Preliminary Issue - Amendment to Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase the landlords' monetary claim to include December 2020 and January 2021 rent of \$2,000.00 for each month, totalling \$4,000.00. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claim for increased rent, despite the fact that he did not attend this hearing.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlords are entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

#### Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for their application?

### Background and Evidence

The landlords stated the following facts. This month-to-month tenancy began on August 1, 2020. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$317.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlords seek an order of possession for unpaid rent based on the 10 Day Notice. The landlords confirmed that the 10 Day Notice was issued for unpaid rent of \$2,000.00, due on November 1, 2020. The landlords claimed that the tenant failed to pay rent of \$2,000.00 per month from September 2020 to January 2021, inclusive, totalling \$10,000.00. The landlords seek a monetary order of \$10,000.00 for unpaid rent and to recover the \$100.00 filing fee paid for their application.

### Analysis

The landlords provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on November 1, 2020, within five days of receiving the 10 Day Notice. The tenant filed an application to dispute the notice, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing in order to provide his evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on November 18, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 18, 2020. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$10,000.00 from September 2020 to January 2021. Therefore, I find that the landlords are entitled to a monetary order of \$10,000.00 in unpaid rent from the tenant.

Although this hearing occurred on January 11, 2021, I find that the landlords are entitled to one full month's rent for January 2021 of \$2,000.00. I accept the landlords' testimony that the landlords have not taken back possession of the unit and the tenant is still residing there. Moreover, rent is due on the first day of each month, as per the landlords' evidence.

The landlords continue to hold the tenant's security deposit of \$317.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlords did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$317.00 in partial satisfaction of the monetary award.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. The tenant must be served with this Order as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain the tenant's entire security deposit of \$317.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$9,783.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The tenant's entire application is dismissed without leave to reapply.

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 11, 2021

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Residential Tenancy Branch