



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, FFT, OPR-DR, OPRM-DR, FFL

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- 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 this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other.

### Issue(s) to be Decided

Should the 10 Day Notice be cancelled, if not, are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or Act?

Is the tenant entitled to an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Is either party entitled to the recovery of the filing fee?

### Background and Evidence

CO gave the following testimony on behalf of the landlords. This tenancy began on November 1, 2019, with monthly rent set at \$1500.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$750.00. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice on December 4, 2020 to the tenants, indicating an effective move-out date of December 14, 2020. A copy of the 10 Day Notice was included in the landlord's evidence.

The landlord testified that the tenants still owe \$2,925.00 in rent for the months of December 2020 through March 2021. The landlords are seeking an Order of Possession, as well as a Monetary Order as outlined below:

| Item                                  | Amount           |
|---------------------------------------|------------------|
| Unpaid Rent for December 2020         | \$475.00         |
| Unpaid Rent for January 2021          | 475.00           |
| Unpaid Rent for February 2021         | 475.00           |
| Unpaid Rent for March 2021            | 1500.00          |
| Filing Fee                            | 100.00           |
| <b>Total Monetary Order Requested</b> | <b>\$3025.00</b> |

The landlord testified that the IB is incorrect in his assumption that he had a separate and unique tenancy agreement. The landlord testified that there is only one tenancy agreement that encompasses all the named parties.

The tenant gave the following testimony. The tenant testified that he has a separate tenancy agreement with the landlord. The tenant testified that he has paid his share of the rent and that the outstanding amount is the responsibility of the other roommates. The tenant testified that since he has paid his share his tenancy should continue.

### Analysis

The tenant submits that he had a separate and unique tenancy agreement, however, he did not provide sufficient documentation to support that allegation. The landlord provided a copy of a tenancy agreement that lists all named parties of this hearing. I find that IB was part of the one and only tenancy agreement for this unit. Furthermore, I find that the landlord has provided sufficient evidence to show that the rent was not paid in full and in accordance with section 26 as noted:

#### ***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.*

Based on the above I hereby dismiss the tenant's application in its entirety without leave to reapply.

Section 55(1) of the *Act* reads as follows:

**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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, December 14, 2020. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided sufficient evidence that the tenants failed to pay the rent in full for the months of December 2020 through to March 2021. Therefore, I find that the landlords are entitled to \$2925.00 in arrears for the above period.

The landlords continue to hold the tenant's security deposit in the amount of \$750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenants.

### Conclusion

The landlord has established a claim for \$3025.00. I order that the landlord retain the \$750.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2275.00. This order may be filed in the Small Claims 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: March 02, 2021

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Residential Tenancy Branch