



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CECILE-EVERGREEN ESTATE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord's agent MWN appeared for the landlord ("the landlord"). The first-named tenant EH appeared for the tenants ("the tenants"). Both parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord submitted an Amendment to the landlord's claim on October 3, 2018 amending the monetary amount claimed to include outstanding rent for the month of October 2018 in the amount of \$1,872.00.

No issues of service were raised. I find the tenants were served with the Notice of Hearing, Application for Dispute Resolution and Amendment pursuant to section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord testified the parties entered into a fixed term tenancy agreement beginning March 2, 2016 until February 28, 2017, following which the tenancy continued month-to-month. Rent is \$1,872.00 a month payable on the first of the month. The tenants provided a security deposit in the amount of \$850.00 which the landlord holds. The tenants have not provided the landlord with permission to withhold the security deposit or apply it to outstanding rent.

The landlord submitted a copy of the tenancy agreement as evidence.

The landlord testified the tenants paid rent for September on September 13, 2018 which the landlord accepted for use and occupancy only. The parties agreed the tenants have not paid rent for October 2018. They agreed the tenants owe the landlord the amount of \$1,872.00 for rent for October 2018.

The landlord testified he posted a 10 Day Notice for Unpaid Rent or Utilities ("Ten-Day Notice") to the tenants' door on September 2, 2018. The Ten-Day Notice provides the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of September 12, 2018 (corrected to September 15, 2018).

The tenants claim the landlord agreed they could pay the rent late. They claim they called the landlord to ask how to pay rent for October 2018 and the landlord refused to reply to their calls. The landlord denied receiving any such calls. The tenants submitted no evidence in support of their claim the landlord agreed to late payment or supporting their reasons for the failure to pay rent for October 2018.

The landlord submitted copies of emails between the parties. The emails provide the following timeline:

- On September 4, 2018 the tenants wrote and explained late payment was due to the female tenant's sudden illness;
- On September 5, 2018 the landlord replied stating the landlord required a certified payment; the landlord did not promise to cancel the landlord's Ten Day Notice;
- On September 11, 2018, the landlord filed for dispute resolution;

- On September 13, 2018, the tenant submitted a certified cheque for payment of rent for September which the landlord accepted for use and occupancy only

The tenants continue to occupy the unit.

The tenants have not disputed the Ten-Day Notice.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenants were served with the Ten-Day Notice on September 5, 2018 in accordance with sections 88 and 90 of the *Act*.

I find the tenants did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service. I find the landlord did not promise the tenants to waive their rights under the Ten-Day Notice.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice (corrected to September 15, 2018) requiring the tenants to vacate the rental unit by that date.

As the tenants continue to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$1,872.00

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order for **\$1,050.00** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$1,872.00
Reimbursement of filing fee	\$100.00
<b>Monetary Order</b>	<b>\$1,972.00</b>

### Conclusion

I grant the landlord a monetary order in the amount of **\$1,972.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to 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: November 01, 2018

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Residential Tenancy Branch