



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPRM-DR FFL**

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; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Introduction

The landlord attended the hearing. The tenants did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

At the outset, the landlord requested the following:

- Amendment of the application to include a request to increase the amount of rent owing by the tenants to \$8,400.00.

Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Further to Rule 4, I find the tenants could reasonably have anticipated that the landlord would claim authorization to increase the monetary order to consider additional overdue rent. I accordingly allow the landlord to amend the application.

The landlord testified he sent the Notice of Hearing and Application for Dispute Resolution to each of the tenants by registered mail on October 17, 2018. He provided the Canada Post tracking numbers referenced on the first page of this decision in support of service. Section 90 of the *Act* deems the tenants to have received the documents 5 days later, on October 22, 2018. I find the landlord served the tenants pursuant to sections 89 and 90 on October 22, 2018,

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 for outstanding rent 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 he entered into a written fixed term tenancy agreement with the tenants commencing August 16, 2016 for rent of \$2,400.00 a month payable on the first of the month. Rent in the amount of \$1,200.00 was payable for the August 2018. The tenants undertook in the agreement to provide a security deposit of \$1,200.00 and a pet deposit of \$1,200.00 (together being \$2,400.00 and referred to as “the deposits”) but did not do so. The landlord holds no deposits.

The landlord submitted a copy of the tenancy agreement signed by both tenants and the landlord.

The landlord provided a Monetary Order Worksheet showing the rent owing during the relevant portion of this tenancy. The landlord testified the tenants have never paid rent and the following rent is owing:

ITEM – OUTSTANDING RENT	AMOUNT
August 2018	\$1,200.00
September 2018	\$2,400.00
October 2018	\$2,400.00
November 2018	\$2,400.00
Outstanding Rent Total	\$8,400.00

The landlord testified he issued a 10 Day Notice to End Tenancy ("Ten-Day Notice") and served the tenant by attaching the Notice to the door of the unit on September 14, 2018, thereby effecting service under section 90 of the *Act* 3 days later, that is, on September 17, 2018. The landlord submitted a copy of the Ten-Day Notice and a witnessed Proof of Service form. The Ten-Day Notice has an effective date of September 24, 2018 (corrected to September 27, 2018).

The landlord testified the tenant did not pay the outstanding rent within 5 days after service of the Ten-Day Notice and did not bring an application for dispute resolution. The landlord requests an order of possession, a monetary award for **\$8,400.00** for rent outstanding, and reimbursement of the filing fee, calculated as follows:

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 17, 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.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice (September 27, 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 **\$8,400.00**.

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 **\$8,500.00** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$8,400.00
Reimbursement of filing fee	\$100.00
Monetary Order	\$8,500.00

Conclusion

I grant the landlord a monetary order in the amount of **\$8,500.00**. This order must be served on the tenant. 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 26, 2018

Residential Tenancy Branch