



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPU, MNRL-S, FFL

### Introduction

On March 16, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not attend the 15-minute teleconference hearing. All parties provided a solemn affirmation.

The Landlord advised that she served a Notice of Hearing and evidence package to each Tenant by registered mail on March 27, 2020. The registered mail tracking history indicated that these packages were delivered on March 31, 2020 (the registered mail tracking numbers are on the first page of this decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on August 1, 2013, that rent was currently established at \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that the Notice was served to the Tenants on March 2, 2020 through their mailbox, and a signed proof of service document was submitted as documentary evidence. She stated that it was served because of rent that was due on March 1, 2020 that was unpaid. She submitted that the Tenants pay cash for rent and she would confirm with them first for payment each month. However, the Tenants did not answer her texts, calls, or emails about the rent, so she knocked on their door to ask for it. She stated that Tenant B.S. answered the door, that he was rude, and that he stated that he would not be paying the rent, so she served the Notice the next day. The amount listed as outstanding on the Notice was \$1,200.00. It also indicated that the effective end date of the tenancy was March 15, 2020. She also advised that no rent has been paid since this date and that the Tenants did not have any written authorization from the Landlord to withhold the rent.

With respect to the amount of utilities owing on the Notice, she advised that she did not give the Tenants a written demand for utilities 30 days prior to service of this Notice. As such, the Landlord was advised that this hearing would only address the unpaid rent issue.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on March 5, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants were deemed to have received the Notice on March 5, 2020, the Tenants must have paid the rent in full or disputed the Notice on March 10, 2020 at the latest. The undisputed evidence is that the Tenants had not paid rent since receiving this Notice nor did they make an Application to dispute the Notice. As well, there was no evidence that the Tenants had a valid reason or any authority for withholding the rent pursuant to the *Act*. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants did not comply with the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rent arrears for March and April 2020, and I grant the Landlord a monetary award in the amount of **\$2,400.00**.

As the Landlord was successful in this Application, I find that she is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

March 2020 rent arrears	\$1,200.00
April 2020 rent arrears	\$1,200.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$2,500.00</b>

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of **\$2,500.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

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: April 24, 2020

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Residential Tenancy Branch