



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCL-S, MNRL-S, OPR, FFL

### **Introduction**

This hearing dealt with the landlord's 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 or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agents, SA, testified on behalf of the landlord in this hearing and were given full authority to do so by the landlord. BF appeared for the tenants in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence package. The tenants did not submit any written evidence for this hearing.

The landlord testified that the tenant was served with the 10 Day Notice to End Tenancy dated March 10, 2020 by way of registered mail on the same date. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on March 15, 2020, 5 days after mailing.

### **Issues to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2017, with monthly rent set at \$1,250.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$625.00, which the landlord still holds.

The landlord served the tenants with a 10 Day Notice for Unpaid rent on March 10, 2020 for failing to pay the outstanding rent by March 1, 2020. The landlord submitted a Statement of Account showing \$3,820.00 in outstanding rent as of June 1, 2020. Since the filing of this application, the landlord testified that the tenants have also failed to pay July and August 2020 rent. The tenants do not dispute that they have not paid the monthly rent as set out in this application.

The landlord is seeking an Order of Possession for September 30, 2020, as well as a monetary order for the unpaid rent, and recovery of the filing fee.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **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.

The tenants do not dispute the fact that they failed to pay the outstanding rent within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on March 25, 2020, the effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by March 25, 2020. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find

that the landlord's 10 Day Notice complies with section 52 of the *Act*. I allow the landlord an Order of Possession for September 30, 2020 as requested in the hearing.

The tenants did not dispute the fact that they failed to pay the outstanding rent. I find that the landlord is entitled to the \$3,820.00 in outstanding rent as summarized in the Statement of Account, plus the outstanding rent for July and August 2020, for a total of \$6,320.00 in outstanding rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$625.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I find that the landlord's 10 day Notice is valid and effective as of March 25, 2020. I grant an Order of Possession to the landlord effective September 30, 2020. 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.

I allow the landlord's monetary claim for \$6,320.00 in outstanding rent. In accordance with the offsetting provisions of section 72 of the *Act*, As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee. I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I issue a \$5,795.00 Monetary Order in favour of the landlord. 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: August 28, 2020

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Residential Tenancy Branch