



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR-PP, OPRM-DR, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, having issued a 10 Day Notice to End Tenancy (with repayment plan) ("10 Day Notice"). The Landlord also applied for a monetary order of \$2,037.50 for outstanding unpaid rent from the Tenant, and to recover the \$100.00 cost of his Application filing fee.

The Landlord and an agent for the Landlord, N.G. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one appeared on behalf of the Tenants. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Agent.

I explained the hearing process to the Landlord and Agent and gave them an opportunity to ask questions about the hearing process. During the hearing, the Landlord and the Agent were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served each Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on October 1, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served

with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

### Preliminary and Procedural Matters

The Landlord and the Agent provided their email addresses and that of the Tenant, B.R., and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord and Agent that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The Landlord said that the amount of rent owing at the time of the Application, was much less than is now owing. The Landlord submitted a rent history for this rental unit, which indicates that the Tenants have not paid rent or the repayment plan amount, or the \$25.00 late rent payment fees owing to the Landlord. The Agent said that the amount owing as of January 1, 2020, is \$12,650.00. The Landlord requested that the Application for a monetary order be increased to this amount to reflect the changing amount of this debt owing by the Tenants.

Pursuant to Rule 4.2 and section 64(3)(c ) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenants to pay their monthly rent and fees owing. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after amending the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$2,037.50 to \$12,650.00.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Agent confirmed the details in the tenancy agreement, which indicates that the periodic tenancy began on September 1, 2019, with a monthly rent of \$1,700.00, due on the first day of each month. The Agent confirmed that the Tenants paid the Landlord a security deposit of \$850.00, and no pet damage deposit.

The Landlord submitted a copy of a 10 Day Notice that was signed and dated September 15, 2020, it has the rental unit address, and was served by registered mail on September 15, 2020. The effective vacancy date of September 3, 2020 is automatically corrected to October 5, 2020, pursuant to section 53 of the Act. The 10 Day Notice states that it was issued because the Tenants failed to pay \$2,037.50 when it was due on September 1, 2020. The Agent said that the Tenants have not paid any rent since July 2020.

The Tenants were also charged \$25.00 per month as a late fee for rent that was not paid.

There is no evidence before me that the Tenants applied to dispute the 10 Day Notice.

### Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenants were deemed served with the 10 Day Notice on September 20, 2020, five days after it was sent via Canada Post registered mail.

### Order of Possession

Section 46 of the Act states that if a tenant who has received a 10 Day Notice does not apply for dispute resolution within five days after the date the tenant receives the notice, 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 by that date.

As there is no evidence before me that the Tenants disputed the 10 Day Notice, I, therefore, find that they are conclusively presumed under section 46(5) of the Act to have accepted the 10 Day Notice. I, therefore, find that the tenancy ended on October 05, 2020. As a result, I find that the Tenants are overholding the rental unit and that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

As the corrected effective date has passed and the Agent testified that rent for January 2021 has not been paid, the Order of Possession will be effective **two days after service on the Tenants.**

*Monetary Order for Unpaid Rent*

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that as of January 1, 2021, he was owed \$12,650.00 in unpaid rent and late rent fees of \$25.00 per month.

In terms of the Landlord's late rent fee, the *Residential Tenancy Act* Regulation ("Regulation") sets out the allowable fees that can be charged by a landlord:

**Non-refundable fees charged by landlord**

**7** (1) A landlord may charge any of the following non-refundable fees:

...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

In this case, I find that not paying any rent amounts to having paid it late. However, as section 7(2) of the Regulation states, a landlord must not charge this fee, unless the tenancy agreement provides for it. I reviewed the tenancy agreement and addendum and I did not find a section that authorizes a late rent fee of any kind. Therefore, I find that this fee is not authorized by the tenancy agreement. As such, I do not award the Landlord with the recovery of the late rent charges claimed. The Landlord has included six months of late fee charges in the rent history document submitted. I, therefore, dismiss this aspect of the claim and reduce the amount requested by the Landlord by \$150.00.

According to the Landlord's testimony and the rent payment history he submitted, in addition to not having paid any rent from August 2020 through January 2021, the

Tenants failed to pay sufficient rent in April 2020 (no rent paid), and June 2020 (failed to pay \$700.00). Further, the rent payment history indicates that the Tenants also had a \$25.00 credit for an overpayment in March 2020.

Based on the evidence before me overall, I award the Landlord with **\$12,575.00** from the Tenants in unpaid rent, pursuant to sections 26 and 67 of the Act.

I also find that the Landlord is entitled to recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act. Adding this to the amount owing to the Landlord by the Tenants equals a total award of **\$12,675.00**, which I award the Landlord, pursuant to section 67.

#### Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$850.00 in partial satisfaction of the Landlord's monetary claim.

Rent owing	\$12,575.00
Filing Fee	100.00
Less security deposit	<u>(850.00)</u>
monetary order	<u>\$11,825.00</u>

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order of **\$11,825.00** from the Tenants for recovery of unpaid rent owing from various months in 2020 through to January 2021, as well as recovery of the Application filing fee.

I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenants have not paid rent for over six months in 2020, as well as January 1, 2021. Accordingly, the Order of Possession will be effective **two days after service** of the Order on the Tenants.

#### Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order 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 Supreme Court of British Columbia and enforced as an Order of that Court.

I found that the Tenants owe the Landlord \$12,575.00 in unpaid rent. The Landlord is also entitled to recovery of the \$100.00 Application filing fee for a total award of \$12,675.00. I authorize the Landlord to retain the Tenants' \$850.00 security deposit as partial satisfaction of this award.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order for the remaining amount owing of **\$11,825.00**. The Landlord is provided with this Order 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 final and binding on the Parties, unless otherwise provided under the Act, and 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: January 12, 2021

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Residential Tenancy Branch