



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord:    MNR   OPR   FF  
                         Tenant:        CNR   RP   RR   FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on September 29, 2018 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on September 14, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlord make repairs to the unit, site, or property;
- an order reducing rent for repairs, services, or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Landlord J.S. attended the hearing although the Landlords were represented at the hearing by their agent, H.W. The Tenants attend the hearing. J.S., H.W., and the Tenants provided affirmed testimony.

On behalf of the Landlords, H.W. testified the Landlords' Application package and evidence was served on the Tenants by registered mail. The Tenants acknowledged receipt. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The Tenants testified they attempted to serve the Tenants' Application package on the Landlords in person, but that the Landlords made it difficult to do so. On behalf of the Landlords, H.W. testified that only J.S. was served with the Tenants' Application package and that neither Landlord received the Tenants' documentary evidence. J.F. acknowledged it was not served on the Landlords in accordance with the Rules of Procedure. Therefore, the Tenants' documentary evidence has not been considered further in this Decision. However, despite the issues with service on one of the Landlords, I find it is appropriate to proceed with the hearing.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the Tenants' Application as it relates to repairs and a rent reduction. The most pressing issue to address is related to the payment of rent and utilities, and whether or not the tenancy will continue.

### Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to an order of possession?
3. Are the Landlords entitled to recover the filing fee?
4. Are the Tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
5. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicated the fixed-term tenancy began on July 1, 2018, and was expected to continue to June 30, 2019. Rent in the amount of \$1,900.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$950.00 and a pet damage deposit of \$150.00, which the Landlords hold.

On behalf of the Landlords, H.W. testified the Tenants did not pay rent when due on September 1, 2018. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 8, 2018 (the "10 Day Notice"). H.W. testified that he served the 10 Day Notice on the Tenants in person with a witness present on that date. A signed Proof of Service document was submitted in support. At that time, rent in the amount of \$1,900.00 was outstanding. A copy of the 10 Day Notice was submitted into evidence. In addition, H.W. referred to an email dated September 3, 2018, in which J.F. was advised the rent had not yet been paid.

Further, H.W. testified that the Tenants did not pay rent when due on October 1, 2018. According to H.W. rent in the amount of \$3,800.00 is currently outstanding.

Further, the 10 Day Notice indicates that utilities in the amount of \$225.92 were outstanding at that time. H.W. testified that \$552.50 is currently outstanding. However, the Landlords did not submit documentary evidence in support. On behalf of the Tenants, J.F. acknowledged that \$225.92 was outstanding but advised he has not received a bill for the more recent utility charges referred to by H.W.

In reply, the Tenants testified they received the 10 Day Notice on September 9, 2019. They testified that rent for September and October was paid in cash. They acknowledged it was paid late but blamed H.W. for not picking it up when he told them he would do so.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due under a 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. Further, section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find it is more likely than not that the Tenants received the 10 Day Notice on September 8, 2018. Service on this date with a witness present was supported by the affirmed testimony of H.W. and a signed Proof of Service document. Accordingly, the Tenants had until September 13, 2018, to make an application for dispute resolution or pay rent in full. However, the Tenants did not make their Application until September 14, 2018. Accordingly, pursuant to section 46(5) of the *Act*, I find the Tenants were out of time to file their Application and are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. Therefore, the Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants.

However, with respect to the Landlords' request for a monetary order for unpaid rent and utilities, I find there is insufficient evidence before me to conclude rent was not paid in cash, as alleged by the Landlords. The problem of proof may be, in part, of the Landlords' own creation. Although section 26(2) of the *Act* confirms that a landlord must provide receipts for rent payments made in cash, the addendum to the tenancy agreement requires rent to be paid in cash *and* stipulates that receipts will not be provided. A tenant ledger showing receipts issued may have provided sufficient evidence to satisfy me the Tenants did not pay rent as alleged. However, in these circumstances, I find there is insufficient evidence before me to conclude rent was not paid to the Landlord. Accordingly, I find that this aspect of the Landlords' Application is dismissed.

With respect to the Landlords' claim for unpaid utilities, J.F. acknowledged that \$225.92 is outstanding for utilities to September 8, 2018. However, there was insufficient evidence before me to conclude the Landlords are entitled to the full amount outstanding as claimed by H.W. Therefore, pursuant to section 67 of the *Act*, the Landlords are granted a monetary order for \$225.92 for unpaid utilities to that date.

As the Landlords and the Tenants have had some success, I decline to grant recovery of the filing fee to either party.

### Conclusion

Subject to the exercise of my discretion under Rule of Procedure 2.3, described above under *Preliminary and Procedural Matters*, the Tenants' Application is dismissed, without leave to reapply.

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$225.92. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 1, 2018

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Residential Tenancy Branch