



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR, LRE  
                             For the landlord: OPR, MNR, FF

### Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) and an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord applied for an order of possession for the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the relevant evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

*Preliminary matter* - I have determined that the portion of the tenants' application dealing with an order suspending or setting conditions on the landlord's right to enter the rental unit is unrelated to the primary issue, which I find is their dispute of the Notice. In other words, the focus of this hearing is to consider the merits of the landlord's Notice and whether the tenancy would continue or end.

As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and dealt only with the issue of the Notice. A decision on this portion of the tenants' Application will be addressed in this Decision.

The tenants filed an amended application, received on December 2, 2019, in which they removed the landlord's name as an applicant, as on their original application, filed on November 17, 2020, and changed the landlord's address.

The tenants filed additional evidence, which was a copy of the Notice and a one page written statement.

In response to the landlord's application, filed on or about November 28, 2019, the tenants filed evidence on January 7, 2020. This 16-page submission consisted of a 4-page written statement, black and white copies of photographs, a receipt and calculations.

Throughout the hearing, the tenants were informed I would not consider any financial claims they may have, if that were the case. From the evidence submitted by the tenants, it was unclear if they were making a monetary claim.

The reasons given to the tenants were that they had not filed an amended application seeking monetary compensation and even if they had, I would have made the determination that any monetary claim of the tenants is unrelated to the primary issue of whether the Notice was valid and enforceable.

At the conclusion of the hearing, when asking the participants if they had any questions, the tenant, SMH, the tenant said the hearing was unfair, that she had not been heard, and that the hearing was one-sided.

I informed the tenants that they had been heard in full during the 45-minute hearing, as to their evidence regarding the landlord's Notice; however, the tenant was not satisfied that I did not hear their evidence on monetary issues.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a copy of a written tenancy agreement showing that this tenancy began on April 1, 2016, with a monthly rent of \$5,000.00, due on the first day of the month.

The tenant said that they began moving out and the majority of their possessions were removed by the end of November 2019. As of the day before the hearing, they had fully cleaned the rental unit and it was empty.

I asked the tenants if they had notified the landlord, and the reply was they had not.

The landlord said he was not aware that they had vacated.

*Landlord's submissions –*

The landlord proceeded first in the hearing to give evidence in support of his Notice.

The landlord submitted that on November 14, 2019, he served the tenants with the Notice, by attaching it to the door, listing unpaid rent of \$34,000.00 as of November 1, 2019. The effective vacancy date listed on the Notice was November 25, 2019. Both parties provided a copy of the Notice.

The tenants confirmed receiving the Notice.

The landlord asserted that since the issuance of the Notice, he has not received any rent from the tenants, and that they actually owed unpaid rent of \$65,100.00 the day the Notice was issued.

Upon my inquiry, the landlord said that he reduced what could have been a monetary claim of \$65,100.00 to \$34,000.00 to come within the jurisdictional limit allowed by the Act, or \$35,000.00.

The landlord also said he had not taken enforcement steps earlier, as the tenants always had an excuse or reason why rent was not being paid, such as buying a house or coming into an inheritance.

The landlord's relevant evidence included a detailed accounting of rent owed, payments made, and a running balance.

*Tenants' response-*

In response, the tenants did not dispute the amount of rent owed.

The tenants submitted that this was not a normal tenancy. The tenants submitted they believed the landlord would have use of part of the basement for occasional use; however, the landlord and his family occupied the "illegal suite" approximately 80% of the time.

The tenants submitted that they never knew who was coming in and out of the basement and they never felt at ease with that situation.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

*Landlord's application-*

Under section 26 of the Act, 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.

A right may include the landlord's consent for deduction; authorization from an Arbitrator, or expenditures incurred to make an "emergency repair", as defined by the Act.

A tenants' remedy when alleged issues arise is to pay the rent, even the contested part of the rent, and file an application for dispute resolution to address any financial issues, not withhold rent.

When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenants owed at least the unpaid rent listed and did not pay the outstanding rent within 5 days of service.

I do not find the tenants demonstrated that they had the right to withhold rent.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenants.

While the tenants said they had fully vacated the rental unit the day before the hearing, the landlord said he had not been notified and wanted the order of possession of the rental unit.

I find the landlord submitted sufficient evidence to show that the tenants owed rent in excess of his monetary claim; however, as he reduced the total amount owed to \$34,000.00, I accept his monetary claim as listed. The landlord is granted a monetary award of \$34,000.00.

I grant the landlord recovery of his filing fee of \$100.00, due to his successful application.

I therefore find the landlord is entitled to a monetary award of \$34,100.00, comprised of unpaid rent of \$34,000.00 and the \$100.00 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$34,100.00.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

*Tenants' application-*

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I dismiss the tenants' application for cancellation of the Notice, without leave to reapply.

As I have granted the landlord's application for an order of possession of the rental unit, I dismiss the tenants' request for an order suspending or setting conditions on the landlord's right to enter the rental unit, without leave to reapply, as the tenancy is ending.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The tenants' application is dismissed without leave to reapply as I have granted the landlord's application in full.

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: January 20, 2020

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Residential Tenancy Branch