



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **LRE CNR OLC FFT // OPRM-DR OPR-DR FFL MNDCL MNRL //**  
**CNR-MT, OLC**

### **Introduction**

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “**Act**”). One of the landlord’s for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$9,925 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And two of the tenant’s for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent dated February 22, 2020 (the “**February Notice**”) pursuant to section 46;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**March Notice**”) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the March Notice pursuant to section 66;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and

participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenants with the notice of dispute resolution form and supporting evidence package via registered mail on March 11, 2020. She provided two Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. She testified that she served the tenants with an amendment to her application for additional rent by regular mail (due to the COVID pandemic, she did not want to travel to the post office to have it delivered by registered mail) on April 14, 2020.

I find that the tenants was deemed served with these package son March 16, 2020 and April 19, 2020, respectively, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Effect of Tenants’ Non-Attendance**

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord bears the evidentiary burden to prove that the Notices are valid, and that she is entitled to the monetary order sought. The tenants bear the onus to prove that they are entitled to the relief sought in their applications, other than the relief of having the Notices cancelled.

As the tenants failed to attend this hearing, I find that they have failed to discharge their evidentiary burden to prove that they are entitled to the orders sought. Pursuant to Rule of Procedure 7.4, the tenants (or their agent) must attend the hearing and present their evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the landlord to the Residential Tenancy Branch in advance of the hearing.

I dismiss the portions of their applications not relating to the validity of the Notices without leave to reapply.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$9,925;
- 3) recover her filing fee?

Are the tenants entitled to an order cancelling the Notices?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting September 1, 2019 and ending September 1, 2020. Monthly rent is \$2,300 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$1,000 and a pet damage deposit of \$500 (collectively, the "**Deposits**"), which the landlord continues to hold in trust for the tenants.

The landlord testified that the tenants have not paid rent for the months of February, March, April, or May 2020. In total, the landlord testified that the tenants are \$9,200 in rental arrears.

The landlord's agent served the February Notice on the tenants in person on February 22, 2020. The landlord entered a copy of the February Notice into evidence.

The landlord's agent served a copy of the March Notice on the tenants by posting it on the door of the rental unit on March 12, 2020. The landlord did not enter a copy of the March Notice into evidence.

The landlord testified that to date, the tenants have paid no part of the rental arrears.

The landlord also testified that she and the tenants entered into an agreement whereby the tenants would repair the floor in the rental unit and the landlord would permit them to deduct \$750 from January 2020's rent. She testified that the tenants made this deduction, but that they never repaired the floor. She testified that the tenants have actually damaged the floor further.

The landlord did not submit any documentary evidence supporting this claim. She testified that she has not been able to access the rental unit to take photographs of the damage.

### **Analysis**

I find that the tenants were served in person with the February Notice on February 22, 2020. I find that the February notice meets the form and content requirements of section 52 of the Act. As the landlord has not submitted a copy of the March Notice into evidence, I cannot determine if it meets these same form and content requirements.

Based on the tenancy agreement, I find that the tenants are obligated to pay monthly rent in the amount of \$ 2,300. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence of the landlord that the tenants, contrary to section 26 of the Act, have failed to pay rental arrears in the amount of \$9,200, comprised of the rental arrears for February, March, April, and May 2020.

Section 7 of the Act states:

#### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I find that the tenants have breached the Act by not paying rent when it was due pursuant to tenancy agreement. As a result of this breach, I find that the landlord has suffered a loss of \$9,200 (an amount equal to the rental arrears). Accordingly, I order the tenants pay this amount to the landlord.

As the tenants failed to pay rent in accordance with their obligations under the tenancy agreement, and as the landlord issued the February Notice, and as the February Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession against the tenants.

As stated above, the landlord bears the onus that prove that she suffered the losses she alleged. I have no documentary evidence to corroborate the landlord's claim regarding the damaged or unfixed floor. I accept that the landlord has not been able to gain access to the rental unit to take photographs of the current state of the floor. She has also not provided any corroborating documentary evidence (such as emails, text messages or other correspondence) in support of her testimony that such an

arrangement existed. As such, I find that she has failed to satisfy her evidentiary onus to show that such an arrangement existed and, if it did, that the tenants have not upheld their obligations under that agreement.

As such, I dismiss the portion of the landlord's application relating to the tenants' failure to repair the floor. In the circumstances, as the landlord also alleged that the tenants have damaged the floor further, which will likely necessitate a further application, and as the COVID-19 pandemic likely interfered with the landlord's ability to enter the rental unit to take the required photographs, I find it appropriate to grant the landlord leave to reapply.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the Deposits in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$7,800, representing the following:

Rental Arrears	\$9,200.00
Filing Fee	\$100.00
Deposit Credit	<b>-\$1,500.00</b>
<b>Total</b>	<b>\$7,800.00</b>

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

*Residential Tenancy (COVID-19) Order, MO 73/2020 (Emergency Program Act)* made March 30, 2020 (the "**Emergency Order**") permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act. As such, it may not be filed in the Supreme Court of BC until the state of emergency declared March 18, 2020 ends (as per section 1 of the Emergency Order).

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: May 4, 2020

---

Residential Tenancy Branch