



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PERFORMING ARTS LODGES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, OPU, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause and for unpaid rent/utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via email on May 14, 2020. Both parties also confirmed that the tenants served the landlord with the submitted documentary evidence. Neither party raised any other service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

During the hearing the hearing the tenants were disconnected from the conference call at 36 minutes past the start of the hearing time. The tenants reconnected at 40 minutes past the start of the hearing time. The tenants were again disconnected at 41 minutes past the start of the hearing time. On both occasions the hearing was paused and the tenants were given a few minutes to reconnect. On the second occasion, the tenants did not re-connect after 3 minutes. The landlord was informed that the hearing would be paused a further 7 minutes to allow the tenants to reconnect. At 50 minutes past the start of the hearing time, the landlord's monetary claim was addressed. The hearing resumed and ended at 56 minutes past the start of the hearing time with no further attendance by the tenants.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause and for unpaid rent/utilities?  
Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement. The monthly rent is \$1,590.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$795.00 was paid on July 1, 2019.

On February 28, 2020, the landlord served the tenant with the 1 Month Notice dated February 28, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of April 30, 2020 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.

The details of cause state:

*Residents of the unit have been renting out the unit on Air BNB site. No approval has been granted to sublease this unit or to use the residence as a place of business.*

*Tenancy started on July, 2019, By October 1, 2019 it was brought to our attention that the unit was being used for short term rentals. I L.M. met with A. and explained that short term rentals were not permitted and that the pre authorization as well as the sublease agreement was required in order to sublease the unit.*

*Again on January 24, 2020 I L.M. witnessed a young couple with suitcases entering the unit. Upon inquiring what their relationship to the tenant was, I was informed by the male guest that they had rented the unit through Air B&B. I contacted the residents and met with B. on January 27<sup>th</sup>, 2020. Written notice was issued.*

*On February 29, 2020 I witnessed two guest leaving unit 323. Due to the ongoing issues. I inquired what there relationship was to the tenants. Once again the guest had stated they rented the unit through Air B&B site and are booked until the end of March.*  
[reproduced as written]

The tenants argued that they were not served with the 1 month notice dated February 28, 2020. The landlord stated that a completed proof of service document dated February 28, 2020 that was submitted shows that the landlord served the notice with a witness and posted it to the rental unit door on February 28, 2020. The landlord also stated that the tenants had filed an application for dispute of the 1 month notice and then an amendment to include the dispute of the 10 Day Notice from this application, but then later was withdrawn on April 22, 2020 by the tenants without the landlords' consent. The landlord provided the Residential Tenancy Branch File number (noted on the cover of this decision) that was scheduled for May 1, 2020. A review of that RTB File shows that the tenant, B.S. filed that original application for dispute and was issued a notice of a hearing on March 5, 2020. The same tenant, B.S. filed the amendment to include a dispute of the 10 Day Notice on March 12, 2020. I find based upon the above evidence that I prefer on a balance of probabilities the evidence of the landlord over that of the tenants. I find that the tenants were properly served and find them deemed served as per section 90 of the Act.

Pursuant to section 47 (4) of the Act the tenant failed to make an application to dispute the notice to end tenancy dated February 28, 2020. Although the tenants did file an application for dispute, the tenants withdrew that application on April 23, 2020. As such, section 47 (5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit. On this basis, the landlord's 1 month notice dated February 28, 2020 is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

The landlord also seeks an order of possession as a result of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 3, 2020. Both parties were advised that as an order of possession has already been issued for based upon the 1 month notice dated February 28, 2020, the landlord's application based upon the 10 Day Notice is dismissed with leave to reapply.

The landlord also seeks a monetary claim for unpaid rent and utilities for \$4,990.00

\$1,590.00	Unpaid Rent, March 2020
\$1,590.00	Unpaid Rent, April 2020
\$1,590.00	Unpaid Rent, May 2020
\$120.00	Gas reimbursement, March, April and May 2020
\$100.00	Filing Fee

During the hearing the tenant, B.S. was disconnected from the conference call hearing twice. On both occasions the tenant was given a few minutes to reconnect. On the second occasion the tenant did not reconnect to the conference call hearing. The hearing was paused for a further 7 minutes, but the tenant failed to reconnect. At that time the hearing resumed in the absence of the tenants.

The landlord claims that the tenant failed to pay rent of \$1,590.00 for each of the three months, March, April and May. The landlords also stated that as part of the signed tenancy agreement the tenants are required to pay as their share \$40.00 per month for gas. The landlords also stated that the tenants failed to pay for these utilities.

The landlord stated that rent is paid through a pre-authorized payment plan. The landlord further stated that for March, April and May 2020, the pre-authorized payment was returned from the bank as "NSF". The landlord has submitted a copy of the bank pre-authorization payment instructions the tenants provided to the landlord dated June 12, 2019.

### Analysis

I accept the undisputed affirmed testimony of the landlord and find that the landlord has provided undisputed evidence that the tenants failed to pay any rent for March, April and May 2020 at \$1,590.00 per month for a total of \$4,770.00.

I also accept the undisputed affirmed testimony of the landlord and find that the landlord ha provided undisputed evidence that the tenants failed to pay gas utilities for March, April and May 2020 which is a required payment under the signed tenancy agreement for \$40.00 per month for a total of \$120.00.

The landlord has established a total monetary claim of \$4,890.00. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$4,990.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of those courts.

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: June 04, 2020

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Residential Tenancy Branch