



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding **MAINSTREET EQUITY  
CORP.**  
and [tenant name suppressed to protect privacy]

Dispute Codes      CNR, RP, RR, OPR-DR-PP, OPRM-DR, FFL

## Introduction

This hearing dealt with cross applications filed by the parties. On September 8, 2020, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking a rent reduction pursuant to Section 65 of the *Act*.

On September 18, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. M.M. and Y.S. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation. M.M. advised that the company that he works for purchased the rental unit on October 20, 2020 and inherited the tenancy from the past landlord. As such, the style of cause on the first page of this Decision has been amended to reflect the new Landlord as the appropriate Respondent.

Tenant P.S. advised that they served the Notice of Hearing package to a representative of the old landlord by hand on or around September 14, 2020 and M.M. confirmed that the Landlord received this package from the previous landlord. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received the Notice of Hearing package.

She also advised that they served their evidence to a representative of the old landlord by email in September 2020. M.M. stated that the Landlord did not get this evidence from the previous landlord and did not check to see if any evidence was served by the Tenants. As per this undisputed testimony, I am satisfied that this evidence was served to the old landlord pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, even if this evidence was not provided by the old landlord, I am satisfied that the Landlord was served with the Tenants' evidence. Consequently, I have accepted this evidence and will consider it when rendering this Decision.

M.M. advised that the old landlord only served one Notice of Hearing and evidence package to both Tenants on or around September 28, 2020. The Tenants confirmed that they were only served with one Notice of Hearing package. While each Tenant was not served a Notice of Hearing package individually pursuant to Rule 3.1 of the Rules of Procedure, as this matter was settled, I am satisfied that this is a moot point.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2019, that rent was established at an amount of \$900.00 per month, and that it was due on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

M.M. advised that the Landlord did not own the rental unit when the Notice was served to the Tenants on September 2, 2020 by hand. The Tenants confirmed that they received the Notice on that day, however. The Notice indicated that \$900.00 was owing for rent on September 1, 2020. The effective end date of the tenancy was noted as September 13, 2020.

M.M. stated that the Tenants did not pay the rent within five days of receiving the Notice, nor have they paid October 2020 rent. The total rent owing for these months is **\$1,800.00**.

In addition, he submitted that the Tenants were in arrears for June 2020 rent in the amount of \$500.00, July 2020 rent in the amount of \$900.00, and August 2020 rent in the amount of \$900.00, totalling \$2,300.00. A payment plan was given to the Tenants on September 1, 2020 for the outstanding arrears. According to this plan, \$230.00 per month was owed over the next ten months, starting on October 1, 2020, to pay off this debt. He advised that the Tenants did not pay this first amount on October 1, 2020; however, at some point they paid \$640.00 to bring the total arrears for these months down to **\$1,660.00**.

P.S. confirmed that they did not pay the \$900.00 for September 2020 rent within five days of receiving the Notice and acknowledged that they did not have a valid reason under the *Act* for withholding the rent. She confirmed that they did not pay October 2020 rent either and that they were in arrears \$1,660.00 for the remaining balance of the June, July, and August 2020 rent.

### Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenants agreed as follows:

1. The 10 Day Notice to End Tenancy for Unpaid Rent of September 2, 2020 is cancelled and of no force or effect.
2. The Tenants will give up vacant possession of the rental unit by **1:00 PM on November 30, 2020 after service of this Order** on the Tenants. The Landlord will be awarded a conditional Order of Possession for this date.
3. Rent of **\$900.00** must be paid for the month of November 2020 on November 1, 2020, as per the terms of the tenancy agreement.
4. The Landlord will compensate the Tenants in the amount of **\$500.00** for their loss of use of a stove during the tenancy and this will satisfy their claim for damages on this issue in full. This amount will be reduced from the payment plan amount of arrears owed.
5. The Tenants must pay **\$200.00** on October 30, 2020.
6. The Tenants must pay **\$350.00** on November 6, 2020.
7. The Tenants must pay **\$350.00** on November 13, 2020.
8. The Tenants must pay **\$350.00** on November 20, 2020.
9. The Tenants must pay **\$350.00** on November 27, 2020.
10. If conditions 3, 5, 6, 7, 8, and/or 9 are not satisfied in their entirety, the Landlord's Order of Possession will be effective **two days** after service of the Order on the Tenants.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a

voluntary basis and that they understood the binding nature of this full and final settlement of these matters.

For ease of reference, the below tables will outline the total arrears owed by the Tenants.

**Calculation of Monetary Award Payable by the Tenants to the Landlord (This is the remaining amount owing under the payment plan)**

June, July, and August 2020 rental arrears	\$1,660.00
Compensation to Tenants as agreed by Landlord	-\$500.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,160.00</b>

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

September 2020 rental arrears	\$900.00
October 2020 rental arrears	\$900.00
November 2020 potential rental arrears	\$900.00
<b>TOTAL MONETARY AWARD</b>	<b>\$2,700.00</b>

The Landlord will also be granted a conditional Monetary Order in the total rental arrears owed by the Tenants, including November 2020 rent, in the event that the Tenants do not pay these amounts in accordance with this settlement agreement. However, if the Tenants pay some or all of the arrears, the Monetary Order will only be enforceable in the amount that remains outstanding.

**Conclusion**

The parties reached a full and final settlement agreement in resolution of this dispute. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of September 2, 2020 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, the Landlord is granted a conditional Order of Possession effective at **1:00 PM**

**on November 30, 2020 after service of this Order** on the Tenants. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

If conditions 3, 5, 6, 7, 8, and/or 9 of this settlement are not satisfied in their entirety, the Landlord's Order of Possession will be effective **two days** after service of the Order on the Tenants.

Moreover, in recognition of the settlement agreement, I provide the Landlord with a conditional Monetary Order in the amount of **\$3,860.00** to serve and enforce upon the Tenants, if necessary. The Order must be served on the Tenants by the Landlord. 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. Only the amounts remaining unpaid will be enforceable on the Tenants.

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: October 27, 2020

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Residential Tenancy Branch