



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR (tenant); OPR, FFL, MNRL (landlord)**

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord provided affirmed testimony that the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on September 16, 2020 to the tenants’ residence and deemed received by the tenant under section 90 of the *Act* five days later, that is, on September 21, 2020.

The landlord provided the Canada Post Tracking Number and submitted a copy of the receipt in support of service. Pursuant to sections 89 and 90, I find the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution on September 21, 2020.

The landlord acknowledged service of the tenants’ Notice of Hearing and evidentiary materials.

The tenants did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

*Preliminary Issue #1*

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$1,575.00 to \$3,100.00 to include additional outstanding rent for the month of October 2020.

The landlord's application, submitted in September 2020, pre-dated the due date for rent for October 2020 and as such the landlord's claim does not reflect outstanding rent for these months.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenants could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the months of May and June 2019. 6 yfxThe amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to increase the landlord's overall claim to \$3,100.00 for unpaid rent for the month of October 2020.

The total monetary order requested by the landlord is \$3,100.00 and reimbursement of the filing fee.

*Preliminary Issue #2*

The landlord requested an amendment to the landlord's application to include a request to apply the security deposit and pet deposit (\$1,550.00 in total) to the award. The landlord testified that each deposit was \$775.00, and that the landlord holds the total deposit without authorization to apply the amount to outstanding rent.

As mentioned above, Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated. I find the tenants could reasonably anticipate the landlord's claim would be amended to include an application to apply the deposit to the outstanding rent. I find that the amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application as requested.

In summary, the landlord outlined the landlord's claim as follows:

ITEM	AMOUNT
Outstanding rent	\$3,100.00
Filing fee	\$100.00
(Less deposit)	(\$1,550.00)
<b>TOTAL CLAIM of LANDLORD</b>	<b>\$1,650.00</b>

*Preliminary Issue # 3*

Rule 7.3 of the Rules of Procedure provides as follows:

***7.3 Consequences of not attending the hearing*** – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenants did not attend the hearing and did not present evidence or submissions, I order the tenants' application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A Monetary Order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An Order for Possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenants did not appear at the hearing.

The parties entered into a tenancy agreement beginning January 9, 2020 for monthly rent of \$1,550.00 payable on the first of the month. The tenants paid a security deposit to the landlord at the beginning of the tenancy of \$775.00 and a pet deposit in the same amount for a total of \$1,550.00 ("the deposit"). The landlord holds the deposit. The tenants have not provided written authorization to the landlord to apply the deposit to outstanding rent. The landlord submitted a copy of the tenancy agreement.

The landlord testified the tenants are currently in arrears of rent of \$3,100.00.

The landlord testified the Ten-Day Notice was served by them upon the tenants on September 3, 2020 thereby effecting service under section 90 of the Act on September 6, 2020. The Notice was posted thereby effecting service three days later. The landlord submitted a copy of the Ten-Day Notice as evidence which is in the standard RTB form.

The Ten-Day Notice provides the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of September 16, 2020. The landlord testified the tenants did not pay the rent in full.

The tenants applied to cancel the Notice on September 6, 2020.

The landlord provided uncontradicted testimony the amount claimed remains unpaid and owing to the landlord.

The landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served.

The tenants continue to occupy the unit. Their claim has been dismissed without leave to reapply.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I find the tenants were served with the Ten-Day Notice on September 6, 2020, in accordance with the *Act*.

I find the tenants failed to dispute the Ten-Day Notice and did not attend the hearing or submit evidence.

Section 55(1) of the *Act* states as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the tenants have not attended the arbitration, I dismissed the tenants' application to cancel the Notice without leave to reapply. Based on the landlord's testimony and evidence including testimony that the tenants continue to reside in the unit, I find the landlords have met the burden of proof on a balance of probabilities that the Notice is proper, and the landlord is entitled to the relief requested.

I therefore grant the landlord an Order of Possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$3,100.00.

Further to section 72, I award the landlord authority to apply the total deposit of \$1,550.00 to the monetary award.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

My award to the landlord is summarized in the following table:

ITEM	AMOUNT
Outstanding rent	\$3,100.00
Filing fee	\$100.00
(less deposit)	(\$1,550.00)
<b>TOTAL AWARD LANDLORD</b>	<b>\$1,650.00</b>

In summary, I grant the landlords a Monetary Order for **\$1,650.00**.

### Conclusion

The tenants' application is dismissed without leave to reapply.

I grant the landlord a Monetary Order in the amount of **\$1,650.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an Order of Possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlords may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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 26, 2020

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Residential Tenancy Branch