



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR, FF  
For the landlord: OPR, MNR-S, 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 the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenants;
- a monetary order for unpaid rent;
- authority to retain the tenants' security deposit; and
- to recover the cost of the filing fee.

The tenants' agent and the landlord's agents attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Each party confirmed receiving the other's evidence.

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 all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or/arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

#### Issue(s) to be Decided

##### *Tenant's application:*

Are the tenants entitled to a cancellation of the Notice and recovery of the filing fee?

##### *Landlord's application:*

Is the landlord entitled to an order of possession of the rental unit, monetary compensation, and recovery of the filing fee?

#### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of May 1, 2014, monthly rent of \$4,000, due on the 1<sup>st</sup> day of the month, and a security deposit and pet damage deposit of \$2,000 each being paid by the tenant to the landlord.

The current monthly rent is still \$4,000.

##### *Landlord's agent's submissions –*

The landlord's agents proceeded first in the hearing to give evidence in support of the landlord's Notice.

The agent submitted that on September 2, 2020, they served the tenants with the Notice, by personal service, listing unpaid rent of \$4,000 owed as of September 1, 2020. The effective vacancy date listed on the Notice was September 13, 2020. Both parties provided a copy of the Notice.

The tenant's agent confirmed the Notice was received.

The agent said that the landlord received a payment of \$2,000 on August 26 and \$2,000 on August 27, 2020, which, according to the agent, the landlord applied to the unpaid rent of August 2020. As the landlord applied that rent to the August rent, the tenants owed, but did not pay the monthly rent for September, 2020, according to the agent. The agent said the tenants owed monthly rent for August and the landlord had the right to apply it to that month.

The agent said the landlord received the tenant's request to apply the two payments to the September rent, on August 31, 2020; however, the landlord had already applied that rent to the August rent owed.

The landlord filed a form of a tenant ledger sheet, which showed the payment history for the year 2020, and as of September 2020, the total unpaid rent was \$12,000, which the agent confirmed at the hearing was monthly rent due during the months of April through August 2020.

Upon my inquiry, the agent confirmed that they have not provided the tenants a repayment plan.

*Tenant's agent's response-*

In response, the tenant's agent submitted that the tenants did not owe monthly rent for September as listed on the Notice, as the landlord was given two payments of \$2,000 each in late August 2020, and asked that it be applied to the September rent. Filed into evidence was a copy of the request.

The tenant's agent submitted that the tenants have offered a repayment plan to the landlord, which has not been accepted by the landlord so far.

Analysis

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

## Tenants' application –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by section 33 of the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Despite this, on July 30, 2020, the *COVID-19 Regulation* went into effect. This Regulation was made under the Emergency Program Act and set out that the emergency period began on March 18, 2020, and ended on the date on which the last extension of the declaration of the state of emergency made on March 18, 2020 expires or is cancelled. This Regulation can be accessed through:

[https://www.bclaws.ca/civix/document/id/crbc/crbc/195\\_2020](https://www.bclaws.ca/civix/document/id/crbc/crbc/195_2020)

Under this Regulation, the rent due during this emergency period is known as the "affected rent".

Section 1.02 of the *COVID-19 Regulation* requires that a landlord **must** give the tenant a repayment plan if the tenant has overdue affected rent and the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan. [My emphasis]

In connection with the *COVID-19 Regulation*, Residential Tenancy Policy Guideline 52 was enacted.

Under this Guideline, "affected rent" is defined as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between **March 18, 2020 and August 17, 2020**. [My emphasis]

Guideline 52, Section C states that a landlord **must not** give a tenant a 10 Day Notice to End Tenancy for unpaid affected rent unless the landlord has previously given the tenant a valid repayment plan or there is a valid prior agreement, and the tenant fails to pay an installment on the date it is due as set out in the applicable repayment plan, or the tenant fails to make a payment as set out in a prior agreement that was not cancelled by the landlord or tenant.

In this case, the tenants were not obligated to pay monthly rent for August 2020 when it was due on August 1, 2020, as noted above. The tenants, however, were obligated to resume monthly rent payments in September 2020. The tenants paid the monthly rent of \$4,000 in two installments on August 26 and 27, and requested it be applied to the September rent.

I do not accept the landlord's agents' assertion the landlord could pick and choose which month during the specified period to which the landlord could apply the rent payments, as other payments were also missed. The tenant's specific request was that the payments be applied to September, which was their right under the *COVID-19 Regulation* and Policy Guideline 52.

I therefore find on a balance of probabilities that the monthly rent for September 2020, was paid in full when the landlord received two installments of \$2,000 each, on August 26 and 27, 2020.

As a result of these restrictions under the *COVID-19 Regulation* as mentioned and due to my finding that the monthly rent for September 2020 was paid in full, I must cancel the Notice.

I therefore order that the 10 Day Notice, dated September 2, 2020, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Any other rent deficiency incurred during the specified period from **March 18, 2020 to August 17, 2020**, must be dealt with in a valid repayment plan while the tenancy is ongoing.

As I have cancelled the Notice, I grant the tenants recovery of their filing fee. I authorized the tenants to deduct \$100 from their next, or future month's rent payment. The tenants are directed to inform the landlord of this deduction so that the landlord will not serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for a \$100 rent shortage.

### **Landlord's application –**

As I have cancelled the Notice of September 2, 2020, I **dismiss** the landlord's request for an order of possession of the rental unit.

As to the landlord's request for a monetary order, Guideline 52, Section F deals with the issues in this case, that is, the landlord's application for a monetary order for unpaid affected rent, which include utility charges, made on or after July 31, 2020, where the tenancy is ongoing.

This section states in relevant part if no valid repayment plan has been given to a tenant for unpaid affected rent, then an arbitrator may dismiss the application with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.

In this case, where the landlord's agents confirmed at the hearing that the unpaid rent was incurred in the specific period and there has been no repayment plan issued to the tenants, I **dismiss** the landlord's application for unpaid rent pursuant to Guideline 52, Section F, **with leave to reapply**.

I inform the landlord that while the tenancy is ongoing, they should issue the tenants a repayment plan prior to a future application claiming for the outstanding monthly rent and unpaid utility charges and that the repayment plan form is available on the Residential Tenancy Branch (RTB) website, RTB form 14 at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

The tenants are cautioned that the "specified period" ended on August 17, 2020 and that monthly rent from September 2020 onward is due and payable pursuant to the written tenancy agreement.

Although the landlord listed unpaid utility charges in their monetary order worksheet, that monetary claim was not listed in their application and it was not mentioned at the hearing. I therefore have not dealt with any issues surrounding unpaid utility charges. The landlord is at liberty to make a future application for dispute resolution seeking unpaid utility charges from the tenants.

As I have dismissed the landlord's application, I do not award recovery of the filing fee.

Conclusion

The tenants' application is granted as I have cancelled the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2020.

The landlord's application seeking enforcement of the Notice and recovery of the filing fee has been dismissed, without leave to reapply.

The part of the landlord's application seeking monetary compensation is dismissed, with leave to reapply.

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