



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT, CNE-MT, LAT, LRE, OPUM-DR, OPU-DR, FFL, OPU, OPC, MNRL, MNDCL, FFL

### Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On September 11, 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 to cancel a One Month Notice to End Tenancy for End of Employment pursuant to Section 48 of the *Act*, seeking more time to cancel the notices pursuant to Section 66 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking to restrict the Landlords’ right to enter pursuant to Section 70 of the *Act*.

On September 22, 2020, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent or utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 23, 2020, the Landlords made another Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 46 of the *Act*, seeking an Order of Possession based on the One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent or utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant D.H. attended the hearing. Both Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant stated that the Notice of Hearing package was not served to the Landlords. Based on this undisputed testimony, as the Tenants did not serve this package in accordance with Section 89 of the *Act* or in accordance with the timeframe requirements of Rule 3.1 of the Rules of Procedure, I am not satisfied that the Landlords were served

with the Notice of Hearing package. As such, I dismiss the Tenants' Application without leave to reapply.

G.B. advised that each Tenant was served the Landlords' first Notice of Hearing and evidence package by registered mail on September 26, 2020 and the Tenant confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants received the Landlords' Notice of Hearing and evidence package. As such, I have accepted the Landlords' evidence that was submitted with this package and will consider it when rendering this Decision.

However, G.B. advised that they did not serve the Tenants their additional evidence, nor did they check to see if the Tenants had the ability to view their digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. As this additional evidence was not served, and as the Tenant advised that he could not view the digital evidence, these documents and files were excluded and will not be considered when rendering this Decision.

G.B. advised that each Tenant was served the Landlords' second Notice of Hearing and evidence package by registered mail on September 29, 2020 and the Tenant confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants received the Landlords' Notice of Hearing and evidence package. As such, I have accepted the Landlords' evidence that was submitted with this package and will consider it when rendering this Decision.

However, G.B. advised that they did not serve the Tenants their additional evidence, nor did they check to see if the Tenants had the ability to view their digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. As this additional evidence was not served, and as the Tenant advised that he could not view the digital evidence, these documents and files were excluded and will not be considered when rendering this Decision.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlords' 10 Day Month Notice to End Tenancy for Unpaid Rent, that the parties' other claims would be dismissed, and that they are at liberty to apply for these claims under a new and separate Application.

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 Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords 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 November 1, 2019, that rent was established at an amount of \$1,800.00 per month, and that it was due on the first day of each month. A security deposit of \$900.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

G.B. advised that the Notice was served to Tenant D.H. by hand on September 3, 2020. He submitted a signed proof of service document and stated that the Tenant was also captured on video being served this Notice. The Tenant initially advised that he did not receive this Notice, then he stated that he “did not know” if he received it, and then he testified that he “probably just tossed it aside.” Based on this wavering, inconsistent, and contradictory testimony, I am satisfied that the Tenant was, more likely than not, served the Notice.

The Notice indicated that \$1,800.00 was owing for rent that was due on September 1, 2020. The effective end date of the tenancy was noted as September 13, 2020. G.B. submitted that the Tenants have not paid October or November 2020 rent either and they are seeking a Monetary Order in the amount of **\$5,400.00** for the unpaid rent for September, October, and November 2020 rental arrears.

G.B. advised that the Landlords also indicated that utilities in the amount of \$368.45 were noted as being owed on the Notice and that a written demand was given to the Tenants on August 4, 2020. However, he advised that this was done by text message. As there was no written demand for the utilities, he was advised that this hearing would only address the non-payment of rent issue, and that any claims for utilities owing would be dismissed with leave to reapply.

The Tenant acknowledged that the outstanding rent for September 2020 was not paid and that they did not have a valid reason under the *Act* for withholding the rent. He also acknowledged that he understood that the Landlords’ Applications also pertained to the issue of unpaid rent for the dispute address.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenants received the Notice on September 3, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants received the Notice on September 3, 2020, they must have paid the rent in full or disputed the Notice by September 8, 2020, at the latest. The undisputed evidence is that the Tenants did not pay the rent by September 8, 2020 to cancel the Notice.

While they did dispute the Notice, it appeared to be disputed late, and they did not serve the Notice of Hearing package either. As such, their Application was dismissed without leave to reapply. Furthermore, the Tenants failed to establish that they had a valid reason, or any authority for withholding the rent pursuant to the *Act*. As the Tenants did

not pay the rent in full by September 8, 2020, and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

As an Order of Possession has been granted on the 10 Day Notice to End Tenancy for Unpaid Rent, it was not necessary for me to consider the merits of the One Month Notice to End Tenancy for Cause.

The Landlords' application for utilities and damages to the rental unit are dismissed with leave to reapply.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the filing fee. However, as it was unnecessary for the Landlords to file two, separate Applications, I find that the Landlords are only entitled to recover the \$100.00 filing fee paid for one Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

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

Item	Amount
Rental arrears for September 2020	\$1,800.00
Rental arrears for October 2020	\$1,800.00
Rental arrears for November 2020	\$1,800.00
Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$5,500.00</b>

Conclusion

Based on the above, I dismiss the Tenants' Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent in its entirety. I grant an Order of Possession to the Landlords effective **two days** after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$5,500.00** in the above terms, and the Tenants must be served with **this Order** as soon

as possible. 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.

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: November 3, 2020

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Residential Tenancy Branch