



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenants: CNR, LRE

For the landlords: OPR-DR, OPRM, 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:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants;
- a monetary order for unpaid rent; and
- recovery of the filing fee.

The landlord attended the hearing; the tenants did not attend the hearing on their own application.

The hearing continued and the landlord was provided the opportunity to present her evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary and Procedural Matters

Despite having their own hearing scheduled for November 5, 2020, at 11:00 a.m. Pacific Time, the tenants failed to attend the hearing.

Rules 7.3 and 7.4 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 re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenants, I order their application dismissed, without leave to reapply.**

Additionally, the landlord submitted that the tenants sent a text message informing the landlord they vacated the rental unit on October 12, 2020. The landlord said she entered the rental unit days later and confirmed the tenants had vacated.

The landlord confirmed she no longer required an order of possession of the rental unit.

The landlord further indicated that she wanted compensation for the extreme amount of damage, cleaning and garbage removal she has had to do on the rental unit.

The landlord was informed that I would not be able to consider her monetary claim for damage, cleaning and garbage removal as this hearing was scheduled to deal with enforcement or cancellation of the Notice and the landlord's request for a monetary order for unpaid rent.

I explained to the landlord any claim for compensation for damage and cleaning has to be supported by evidence, which was not filed in her present application.

The landlord is at liberty to apply for any remaining issues associated with this tenancy.  
Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee paid for this application?

### Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy with a start date of June 1, 2020, monthly rent of \$4,100, due on the 1<sup>st</sup> day of the month, and a security deposit of \$2,050 and pet damage deposit of \$500 being paid by the tenants to the landlord.

The landlord submitted evidence that on September 10, 2020, the tenants were served the Notice, by attaching it to the tenants' door, listing unpaid rent of \$4,100 owed as of September 1, 2020. The effective vacancy date listed on the Notice was September 20, 2020. The Notice was filed into evidence.

The tenants did file their application to dispute the Notice within the 5 days allowed, as their application was made on September 13, 2020.

The landlords submitted that since the Notice was issued to the tenants, the tenants did not make any further rent payments prior to vacating and owe for the months of September and October 2020, or \$4,100 each.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenants that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to

have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenants owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenants filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

Therefore, I find that the landlord submitted sufficient evidence to show that the tenants owed, but did not pay, the rent of \$4,100 for the months of September and October 2020, when they vacated the rental unit. I therefore find the landlord is entitled to a monetary award of \$8,200, for unpaid rent.

I also grant the landlord a monetary award of \$100 for recovery of the filing fee paid for her application.

I therefore find the landlord is entitled to a monetary award of \$8,300, comprised of unpaid rent of \$8,200 and the \$100 filing fee paid by the landlord for this application.

The landlord confirmed she did not want to offset her monetary award by deducting the tenants' security deposit and pet damage deposit.

### Conclusion

The tenants' application is dismissed without leave to reapply as they failed to attend the hearing.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$8,300.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement are recoverable from 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: November 5, 2020

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Residential Tenancy Branch