



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenants: LRE, CNR, CNC, RP, AAT  
Landlord: FFL, OPRM-DR, OPR-DR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on October 15, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent.

The Landlord’s Application for Dispute Resolution was made on October 16, 2020 (the “Landlord’s Application”). The Landlords initially applied through the Direct Request process; however, since the Tenants had already filed to dispute the 10 Day Notice to End Tenancy, the Landlords’ Application was scheduled to be heard with the Tenants’ Application. The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant’s Representative L.E., the Landlords, and the Landlords’ Agent B.B. attended the hearing at the appointed date and time. At the start of the hearing, the Landlords confirmed receipt of the Tenants’ Application and documentary evidence. As such, I find that these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Landlords testified that they served the Tenants with their Application and documentary evidence on October 26, 2020 by registered mail. The Landlords provided the Canada Post registered mail receipts in support. L.E. stated that he did not receive the Landlords’ Application or documentary evidence. L.E. also indicated that he was out of the Province at the time of the mailing. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the

above documents were sufficiently served to the Tenants on November 1, 2020 for the purposes of the *Act*.

### Preliminary Matters

The Tenants submitted an amendment to their Application on January 4, 2021 to include claims to; restrict the Landlords' right to enter the rental unit, to cancel a One Month Notice to End Tenancy for Cause, an order for regular repairs, and an order to allow access to the Tenant or their guests. During the hearing the Landlords stated that they did not receive the Tenants' amendment.

According to the Residential Tenancy Branch Rules of Procedure 4.6 Serving an Amendment to an Application for Dispute Resolution;

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the *Residential Tenancy Act*. The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

As the Tenants submitted their amendment 4 days before the hearing, and the fact that the Landlords have not yet received the Tenants' amendment, I find that the Tenants' amendment was late and will not be considered in this decision. The claims which were included in the Tenants' amendment are therefore dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the Landlords indicated that between the time of his Application made on October 16, 2020 and the hearing date, rent for October, November and December 2020 has not been paid. The Landlords wished to amend their Application to include the unpaid rent for the above-mentioned months.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); 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, the Application may be amended at the hearing. If an

amendment to an Application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In light of the above, I find it is reasonable to amend the Landlord's Application to include unpaid rent for the month of for October, November and December 2020, bringing the Landlords' monetary claim to \$8,400.00.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice for Unpaid Rent (the "10 Day Notice"), pursuant to Section 46 of the Act?
2. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the Act?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the Act?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the Act?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 15, 2020. Currently, the Tenants are required to pay rent in the amount of \$2,100.00 to the Landlords on the 15<sup>th</sup> day of each month. The Tenants paid a security deposit in the amount of \$2,100.00 which the Landlords currently hold.

The Landlords testified that the Tenants did not pay rent in the amount of \$2,100.00 when due on September 15, 2020. The Landlords testified that they subsequently issued a 10 Day Notice in the amount of \$2,100.00, dated October 1, 2020, with an effective vacancy date of October 15, 2020.

The Landlords stated that they served the 10 Day Notice by placing it in the Tenants' mailbox on October 6, 2020. The Landlords submitted a witnessed proof of service form in support. L.E. confirmed receipt on the same day. The Landlords stated that the Tenants have not made any payments towards the outstanding balance of unpaid rent as indicated on the 10 Day Notice. Furthermore, the Landlords stated that the Tenants have failed to pay any rent for October, November and December 2020. As such, the Landlords are seeking an order of possession as well as a monetary order for unpaid rent in the amount of \$8,400.00 for the unpaid rent from September to December 2020.

L.E. responded by stating that the 10 Day Notice to End tenancy has nothing to do with unpaid rent. L.E. did not indicate what he felt that the 10 Day Notice was in relation to. L.E. stated that he was under the impression that the Tenants were able to pay the rent in increments, however, did not indicate or provide evidence in support of the Tenants paying any amount of rent after receiving the 10 Day Notice.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I accept that the Landlords served the 10 Day Notice dated October 1, 2020, with an effective vacancy date of October 15, 2020, by placing it in the Tenants mailbox on October 6, 2020. L.E. confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenants may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenants had until October 11, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I find that the Tenants submitted their Application to cancel the 10 Day Notice on October 15, 2020 which is outside the allowable time period to dispute a the Notice in accordance with the Act. As such, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, pursuant to section 46(5) of the Act. I further find that the Tenants have provided no evidence that they have paid rent to the Landlords in the amount of \$2,100.00 for the month of September, October, November and December 2020, totalling \$8,400.00 owed to the Landlords.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of **\$8,400.00**. Having been successful, I also find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords are entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$6,400.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$8,400.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$2,100.00</i> )
<b>TOTAL:</b>	<b>\$6,400.00</b>

Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$6,400.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 08, 2021

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Residential Tenancy Branch