



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, MNRL-S;    CNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to retain the tenants' security deposit, pursuant to section 38.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46.

The "female tenant" did not attend this hearing, which lasted approximately 74 minutes. The landlord and the male tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants").

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

### Preliminary Issue – Evidence

The tenant confirmed receipt of an updated rent ledger from the landlord on the date of this hearing, January 12, 2021. I did not receive a copy of this rent ledger from the landlord. Both parties agreed that this ledger included only two new credit payments for

the tenants' security deposit and lawn maintenance deposit, both returned to the tenants on January 1, 2021, after the tenants vacated the rental unit. During the hearing, the tenant agreed with the information on this ledger. I did not consider the updated January 2021 rent ledger at the hearing or in my decision, as I did not receive a copy of it, but I considered the testimony of both parties relating to the information in that ledger, since both parties agreed to its contents.

The tenant confirmed that the tenants did not submit any written evidence for this hearing. He claimed that he needed more time to do so because he had a difficult time moving to a new place, the female tenant who was his girlfriend left him, and there was a covid-19 pandemic in the world.

I notified the tenant that I could not accept evidence from the tenants after the hearing was over, as the landlord would not have notice of the evidence or a chance to respond. I informed him that the tenants had ample time from when they received the landlord's application, which was filed on October 16, 2020, and this hearing date, almost three months later on January 12, 2021, to submit evidence. The tenants had 7 days prior to the hearing date to submit responsive evidence to the landlord's application, as per Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

The tenants also filed their own application for this hearing on December 5, 2020 but did not supply any evidence with it. The tenants had 14 days prior to the hearing date to submit evidence in support of their own application, as per Rule 3.14 of the RTB *Rules of Procedure*. The tenant claimed that he filed the tenants' application to "buy more time" to move out.

#### Preliminary Issue – Jurisdiction

During the hearing, both parties agreed that the rental unit was occupied by the tenants primarily for residential purposes throughout this tenancy. Both parties agreed that the rental unit was used as a filming location for four days total between September and October 2020, whereby the tenants collected a profit under a sublet agreement, permitted by the landlord.

Accordingly, I find that I have jurisdiction to hear this matter, as I find it is a residential tenancy. I find that this is not a commercial tenancy where the unit was primarily occupied for business purposes and excluded by section 4(d) of the *Act*.

Preliminary Issue - Amendment to Applications

At the outset of the hearing, both parties confirmed that the tenants vacated the rental unit on December 31, 2020. The landlord stated that he did not require an order of possession and the tenant stated that he did not require the tenants' application to cancel the landlord's 10 Day Notice.

I notified both parties that the tenants' entire application and the landlord's application for an order of possession, were both dismissed without leave to reapply. Both parties confirmed their understanding of same.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include November and December 2020 rent. The landlord filed his application on October 16, 2020, before November and December 2020 rent were due.

I find no prejudice to either party in making this amendment, as both parties attended the hearing and discussed the rent owing, including November and December 2020 rent. The landlord provided detailed rent ledgers to the tenants, including that rent information, and the tenant agreed that rent was owed to the landlord during the hearing.

The tenants are aware that rent is due on the first day of each month. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the *RTB Rules of Procedure* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

The tenant spoke for most of the hearing time, as compared to the landlord. The hearing took 74 minutes because the tenant was disruptive and argumentative throughout the hearing.

The tenant interrupted, argued, and yelled at both the landlord and I, while we were speaking. The tenant laughed while the landlord and I were both speaking. I repeatedly cautioned the tenant and notified him that his behaviour was inappropriate, and I could end the conference if he continued with this behaviour. However, I allowed the tenant to attend the full hearing, despite his behaviour, in order to allow him to provide submissions regarding the landlord's application.

I caution the tenant to not engage in the same inappropriate behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and he may be excluded from future hearings. In that case, a decision will be made in the absence of the tenant.

#### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit?

#### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and ended on December 31, 2020. Monthly rent in the amount of \$2,960.00 was payable on the first day of each month. A security deposit of \$1,387.50 and a lawn maintenance deposit of \$250.00, totalling \$1,637.50, were paid by the tenants and the landlord returned both deposits to the tenants on January 1, 2021, by crediting their unpaid rent balance for \$1,638.00 total.

During the hearing, both parties agreed that the tenant failed to pay rent of \$7,492.00 to the landlord from April to December 2020. The landlord provided a detailed rent ledger from December 2020, indicating the dates of rent owed and paid, and the amounts of rent owed and paid. The tenant agreed with the information in this rent ledger.

The landlord stated that rent of \$2,960.00 was due for each month from April to December 2020, inclusive. The landlord indicated payments were made by the tenants, leaving a balance owed of \$9,130.00 as of December 1, 2020. The landlord claimed that he credited the tenants' unpaid rent owed by returning their security deposit of \$1,388.00 and lawn maintenance deposit of \$250.00 on January 1, 2021, leaving a final balance of \$7,492.00 owed by the tenants. The tenant agreed with all of the above information during the hearing.

The landlord seeks a monetary order of \$7,492.00 from the tenant. The tenant disputes the landlord's application, claiming that he does not have the money to pay to the landlord at this time. He estimated being able to pay the landlord in the middle of the year 2023, in two years. He stated that due to the covid-19 pandemic, he lost his job and he is trying hard to find a new one. He said that the female tenant left him, after being his girlfriend for 10 years, moving out because of the issues related to the unpaid rent and the pandemic. He explained that he moved out as soon as he could and had to occupy a family property in order to do so. He maintained that he made best efforts to pay the landlord as much as he could, including having filming done for profit at the rental unit, in order to pay rent to the landlord.

During the hearing, both parties looked up their email and banking information relating to e-transfers and rent paid by the tenants to the landlord. The tenant confirmed that he provided money to the female tenant that he thought was given to the landlord to pay rent, but may not have been given, since the female tenant was a medical student. The tenant claimed that he had to sort out those issues with the female tenant privately, which did not involve the landlord.

### Analysis

Section 26 of the *Act* requires the tenants to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence at this hearing, as the tenant agreed with what the landlord said. Both parties agreed that the tenants failed to pay rent of \$7,492.00 to the landlord from April to December 2020. Accordingly, I find that the landlord is entitled to rental arrears of \$7,492.00 from the tenants.

The landlord has already returned the tenants' security and lawn maintenance deposits, totalling \$1,638.00, as a credit towards the unpaid rent balance owed by the tenants. Therefore, these deposits cannot be retained or offset against the monetary order. This portion of the landlord's application is dismissed without leave to reapply.

During the hearing, I notified both parties about my decision verbally, and informed them that I would also provide a written decision after the hearing was over. I informed the tenant that I would be issuing a monetary order of \$7,492.00 against the tenants, as he agreed to the unpaid rent calculation submitted by the landlord. The tenant stated that he would be appealing my decision and filing a civil claim against the landlord. The tenant inquired as to whether there was a task force at the Provincial Court of British Columbia, where monetary orders are enforced, to deal with covid-19 issues. I notified the tenant to contact the Provincial Court directly for further information, as I could not provide him with legal advice, and I did not have information regarding same. The tenant confirmed his understanding of same.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$7,492.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The remainder of the landlord's application is dismissed without leave to reapply.

The tenants' application is dismissed without 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: January 12, 2021

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Residential Tenancy Branch