



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding North Country Properties and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, LRE, LAT, AS, OPRM-DR, OPR-DR, FFL

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord identified Tenants JV and DB (the tenants) in their application for:

- an Order of Possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant JV and Applicant DG applied for:

- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order allowing the tenants to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

No one attended the hearing to represent the tenants or Applicant DG, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's representative (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**Accordingly, in the absence of any attendance at this hearing by the Applicant I order the application by Tenant JV and Applicant DG dismissed without liberty to reapply.**

The landlord presented undisputed sworn testimony supported by written evidence in the form of a signed and witnessed Proof of Service document that the 10 Day Notice was posted on the door of this rental unit on January 15, 2021. The landlord in attendance at this hearing testified that they were the landlord representative who posted the 10 Day Notice on the door of the rental unit. On this basis and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with this Notice on January 18, 2021.

The landlord gave undisputed sworn testimony supported by written evidence in the form of documentation from Canada Post that they sent the tenants a copy of their dispute resolution hearing package and written evidence by registered mail on February 5, 2021. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with these documents on the fifth day after their registered mailing.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants? Should any other orders be issued with respect to this tenancy?

#### Background and Evidence

The tenants and the landlord signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on October 5, 2020 for a tenancy scheduled to run from October 1, 2020 to September 30, 2021. Monthly rent is set at \$1,200.00, payable in

advance on the first of each month. The landlord continues to hold the tenants' \$600.00 security deposit paid when this tenancy began.

The landlord's 10 Day Notice identified \$2,400.00 in rent owing as the landlord maintained that the tenants had failed to pay their rent for December 2020 and January 2021. At the hearing, the landlord said that the tenants had paid \$1,200.00 on February 5, 2021, which the landlord had accepted for use and occupancy only for the month of February 2021. The landlord testified that \$2,400.00 remains owing for December 2020 and January 2021.

In the tenants' application, they did not dispute the landlord's claim that rent had not been paid for December 2020 and January 2021. Rather, they asserted that they were entitled to a monetary award equivalent to the amount of rent outstanding. This was because they claimed to feel threatened and fearful as a result of allegations attributed to the landlord's representative and on the basis of "almost having the front door kicked in by some criminals."

### Analysis

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "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." Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Since the tenants have applied to cancel the 10 Day Notice the day after the Notice was posted on their door, the onus rests with the landlord to establish on a balance of probabilities that the tenants have failed to pay outstanding rent in accordance with the Agreement and that their failure to do so entitles the landlord to end this tenancy on the basis of the 10 Day Notice.

Based on the landlord's undisputed testimony at this hearing and the written evidence presented by the landlord and in the absence of any attendance at this hearing by the tenants or their submission of any substantive written evidence, I allow the landlord's application to end this tenancy on the basis of unpaid rent as identified in the 10 Day Notice.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession that is to take effect on February 28, 2021, the last day for which the landlord has allowed their use and occupancy of the rental unit following their payment on February 5, 2021. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by 1:00 p.m. on February 28, 2021, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants contravened the terms of their Agreement and the landlord has experienced losses arising out of their failure to abide by the monetary terms of their fixed term Agreement.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Based on the landlord's undisputed sworn testimony and written evidence, I allow the landlord's application for a monetary award of \$2,400.00 for unpaid rent owing from December 2020 and January 2021. As the landlord's application has been successful, I also allow the landlord's application to recover the \$100.00 filing fee for their application.

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$600.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I dismiss the tenants' application in its entirety without leave to reapply.

I allow the landlord's application to end this tenancy on the basis of the 10 Day Notice. The landlord is provided with a formal copy of an Order of Possession effective February 28, 2021. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour under the following terms, which allow the landlord to recover unpaid rent and their filing fee for their application, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid December 2020 Rent	\$1,200.00
Unpaid January 2021 Rent	1,200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,900.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 23, 2021

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Residential Tenancy Branch