



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      CNR, RR, LRE, OLC, FFT, OPR-DR

### Introduction

This Review 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 a rent reduction pursuant to Section 65 of the *Act*, seeking to restrict the Landlords’ right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 21, 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 pursuant to Section 46 of the *Act*.

A Dispute Resolution proceeding was originally set down for November 3, 2020 and a Decision was rendered on November 4, 2020. The Tenants applied for Review Consideration of that Decision on November 19, 2020 and were granted a Review Hearing. This Review Hearing was set down to be heard on February 26, 2020 at 11:00 AM.

At the start of the Review Hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. All parties acknowledged these terms.

Both Tenants attended the Review Hearing. The Landlord attended the Review Hearing with D.L. attending as an agent for the Landlord. All in attendance provided a solemn affirmation.

As per the Review Consideration Decision dated November 23, 2020, the Tenants advised that the Review Consideration Decision and new Notice of Hearing package was served to the Landlords by hand on December 14, 2020. The Tenants advised that this was served so late because there were delays receiving the package from the Residential Tenancy Branch. Records confirm that this was the case. The Landlord confirmed that he received these documents on December 14, 2020. Based on this undisputed testimony, despite the delay in service, I am satisfied that the Landlord was served the Review Consideration Decision and new Notice of Hearing package.

The Tenants and Landlord advised that no new evidence was submitted for consideration on this file.

As per the original Decision, I was not satisfied that the Tenants complied with Rule 3.10.5 of the Rules of Procedure regarding digital evidence, and as such, their video evidence was excluded and not considered when rendering this Decision. The remainder of the Tenants' evidence was accepted and considered when rendering this Decision.

As well, I was satisfied that the Tenants received the Landlords' evidence package. As such, I accepted the Landlords' evidence and considered it when rendering this Decision.

During the original 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 Tenants' 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 Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants 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 confirmed at the Review Hearing that the tenancy started on September 1, 2018, that rent was established at an amount of \$2,500.00 per month, and that it was due on the first day of each month. Rent was reduced to \$2,400.00 per month shortly after the tenancy commenced due to a reduction in provided facilities. A security deposit of \$1,250.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenants by hand on September 11, 2020 and the Tenants confirmed receipt of this Notice. The Notice indicated that \$2,400.00 was due on September 1, 2020. It also stated that the effective end date of the tenancy was September 21, 2020.

The Tenants advanced largely the same arguments as at the original hearing. They stated that the owner misled them and advised that the potential purchaser of the property was the new owner. They testified that they had a verbal agreement in or around June 2020 with this person to reduce their rent to \$1,000.00 per month, starting on August 1, 2020. However, they did not submit any documentary evidence to corroborate the legitimacy of this agreement. They also made submissions pertaining to issues that were not relevant to this hearing.

The Landlord advised that this other person that the Tenants refer to was never an owner, and there were no agreements made to reduce the rent. This person is the purchaser of the property and will take possession of the rental unit in March 2021. The Landlord provided the Tenants with this person's phone number so that the parties

could be introduced to each other, but there was never any agreement to reduce the amount of rent owed.

D.L. advised that on top of not paying rent when it was due according to the tenancy agreement, the Tenants only paid rent of \$1,000.00 on September 15, 2020 and rent of \$1,000.00 on October 16, 2020 without any authorization to do so. On November 16, 2020, for some reason, the Tenants paid \$2,800.00. Then, on December 2, 2020, January 4, 2021, and February 2, 2021, they paid \$2,400.00 each month. Receipts for use and occupancy only were provided to the Tenants for any payments from October 2020 onwards.

As a note, when the parties were providing testimony, both parties would interrupt contrary to the instructions they were provided at the start of the Review Hearing. Both parties were reminded how to conduct themselves as per the discussion at the outset of the hearing, and both parties confirmed that they understood this direction. They were also advised that any further inappropriate behaviour would lead to either party being muted from participating in the conference call. Despite this caution, when the Landlord was making submissions, Tenant M.N. continued to interject. As a result, the Tenants were muted from participating in the hearing until it was their opportunity to respond.

### 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.

As outlined in the original Decision, the undisputed was that the Tenants received the Notice on September 11, 2020. As such, they must have paid the rent in full or disputed the Notice by September 16, 2020, at the latest. The Tenants only paid \$1,000.00 of the rental arrears by September 16, 2020.

While they did dispute the Notice, their submissions upon Review were largely the same. They advised that they had a verbal agreement with a person that they believed to be the owner of the rental agreement for a reduced amount of rent. However, other than their testimony, they did not have any proof of such an agreement. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find that the Tenants failed to provide sufficient compelling or persuasive evidence to corroborate their claims that their rent was reduced to \$1,000.00 per month.

As I am not satisfied that the Tenants established that they had a valid reason, or any authority under the *Act* for withholding the rent, and as they did not pay the rent in full by September 16, 2020, I am satisfied that they breached the *Act* and jeopardized their tenancy.

As the 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 confirm the original Decision dated November 4, 2020. 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 the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the filing fee.

### Conclusion

Based on the above, I confirm the original Decision and Order dated November 4, 2020. I dismiss the Tenants' Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent in its entirety. I uphold the Notice and 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.

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: March 1, 2021

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Residential Tenancy Branch