



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenants: CNR  
For the landlord: OPUM-DR, OPU-DR, FFL

### **Introduction**

On December 18, 2020 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”).

On December 26, 2020 the landlord applied for an order of possession of the rental unit, and a monetary order for rent and/or utilities not paid. Additionally, they applied for reimbursement of the application filing fee.

The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 16, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

### **Preliminary Matter**

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document was served in a verified manner allowed under

section 89 of the *Act* and I must accept that evidence. In the hearing the landlord stated that they served a copy of that document in person to the tenants on January 2, 2021. They provided proof of this in the form of a written document outlining the documents they delivered, with each tenant's signature showing they received this information.

The landlord stated in the hearing that they did not receive any information about the tenant's application. That application is crossed with that of the landlord here, concerning the same matter.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:23 a.m. to enable them to call in to this teleconference hearing scheduled for 11:00 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenants applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenants' application for cancellation of the 10-Day Notice. The tenants do not have leave to reapply on this issue.

#### Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and/or utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

#### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, pages of which they provided as evidence. The tenancy began on May 1, 2020 for a fixed term ending on April 30, 2021. The rent amount was \$2,650 per month. The tenants were not in attendance at this hearing to provide any information contrary to that presented by the landlord on these discrete points.

The landlord stated that the tenancy agreement sets out that each month the tenant would pay 50% of utilities owing. Approximately June or July 2020 the tenant conferred with the landlord and the parties reached a verbal agreement that the tenant would pay \$150 per month for utilities as a “lump sum”. The landlord stated this was a verbal agreement in place since that time.

The landlord provided a copy of the 10-Day Notice, issued December 13, 2020. This document gave the move-out date of December 24, 2020. This listed the failure by the tenants to pay the rent of \$6,565 on December 13, 2020. In the hearing the landlord stated they served the document by attaching it to the door of the rental unit. As provided in a ‘Proof of Service’ document, a witness observed service of the 10-Day Notice to the tenant.

In the hearing, the landlord testified that the tenant has been making partial payments for the amount owing, in installments. They provided information on the tenant’s payments from January 2 through to March 11, 2021. This leaves a balance owing of \$1,365 as of the date of the hearing. The landlord acknowledged that the tenant was making the effort at making payments and this was a pattern that was in place since the beginning of the tenancy.

### Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the arrangement between the parties for utilities. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

The following s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by December 21, 2020, within the five days granted under s. 46(4) of the *Act*. This date also accounts for a three-day margin of time for the service provision that si three days past the date of service. The tenant disputed the notice within that timeframe; however, that Application is dismissed.

The *Act* s. 52 states that a notice to end tenancy, in order to be effective, must be in writing and must be signed and dated by the landlord, give the rental unit address, state the effective date, state the grounds for ending the tenancy, and be in the approved form.

I find the landlord has the authority to issue the Notice under s. 46 of the *Act*. On my review of the individual document, I find it complies with the requirements of s. 52 regarding form and content. Therefore, I grant the landlord's request for an Order of Possession under s. 55 of the *Act*.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the landlord's affirmed testimony that the tenant failed to pay full monthly rent for December 2020 and the months following through to March 2021. This constitutes a breach of the *Act* and the tenancy agreement. The landlord testified that the tenant is making payments on a regular basis and they fully acknowledged this. The tenant nonetheless is still not in compliance with the regular payment schedule. The landlord stated they do not wish to end the tenancy for this reason; however, I grant an Order of Possession to the landlord as a measure of surety against future unpaid rent amounts. As presented, I find the landlord is entitled to the amount of \$1.365 as they claim.

As the landlord is successful, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

Conclusion

In the absence of the tenants I dismiss their application in its entirety and without leave to re-apply.

I grant an Order of Possession to the landlord effective two days after service of the Order on the tenants. Should the tenants fail to comply with the Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to ss. 67 and 72 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$1,465. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 16, 2021

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Residential Tenancy Branch