



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDL-S, MNRL-S, MNDCL-S, FFL  
CNR, MNDCT, FFT**

### **Introduction**

This hearing dealt with applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the tenants' security and pet deposits pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a cancellation of their 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

### **Preliminary Issues**

During the introductory portion of the hearing, the arbitrator assigned to the hearing suffered from an unexpected power outage and was disconnected from the hearing at approximately 11:08 AM. At 11:10 AM, I, as a second arbitrator called into the teleconference to conduct the hearing.

The original arbitrator reported that both tenant W.S. and landlord K.L. were present at the outset of the hearing. Tenant W.S. informed the original arbitrator that the dispute was complicated and should not be dealt with at the RTB level and should be heard in the Supreme Court. W.S. then informed the original arbitrator that he would not respect their decision and exited the teleconference.

Following the departure of W.S. from the hearing, the original arbitrator continued their introduction of the proceeding with landlord K.L. It was at this point the original arbitrator lost power and I, as a second, new arbitrator called in to the hearing.

K.L. provided undisputed sworn testimony regarding service of his application for dispute and evidentiary package to the second arbitrator. K.L. stated two packages for dispute were sent individually to the tenants by way of Canada Post Registered Mail on March 6, 2021. Copies of the Canada Post tracking numbers were provided at the hearing. The landlord stated Canada Post recorded the packages delivered on March 8 & 9, 2021. Pursuant to sections 88, 89 & 90 of the *Act* the tenants are deemed served with the landlords' application for dispute and evidentiary packages.

As part of their evidentiary package, the tenants submitted a document titled "our statement." This letter is reproduced below at page 4 & 5; however, I must specifically examine the following portion of their letter:

*...We will not be pursuing this application anymore at the RTB level as we believe this case falls in the Supreme Court Jurisdiction.*

*If L and K are still unsatisfied, they can seek remedy in the Supreme Court where all evidence can be look (sic) at and with proper time and due process.*

*RTB is simply not equipped to handle this procedure*

I do not consider the tenant's exit from the hearing with the original arbitrator to be a withdrawal of their application. Rule of Procedure 5 provides significant detail on the way an application for dispute resolution may be withdrawn. Rule 5 states:

An applicant may withdraw an application for dispute resolution by notifying the Residential Tenancy Branch and providing a legible copy of any required documents, in one of the following ways:

- any time before the hearing, withdrawing the application through the Online Application for Dispute Resolution and either emailing any required documents to HSRTO@gov.bc.ca including the file number in the subject line ("Withdrawal documents: file #") or providing hard copies of any required documents to any Service BC Office or the Residential Tenancy Branch Office. Applications to dispute a notice to end tenancy or for adjourned hearings or review hearings may not be withdrawn online;
- any time before the hearing, notifying the Residential Tenancy Branch by telephone and providing hard copies of any required documents to any Service BC Office or the Residential Tenancy Branch Office;
- any time before the hearing, attending any Service BC Office or the Residential Tenancy Branch Office in person and providing a copy of any required documents;

or • at least one week before the scheduled hearing, emailing the Residential Tenancy Branch at HSRTO@gov.bc.ca, including the file number in the subject line ("Withdrawal: file #"), and attaching a copy of the required documents, if any.

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application. Required documents:

- the respondent landlord's written consent to the withdrawal

I find the tenant's statement to the original arbitrator provides no evidence that they intended to withdraw their application. Rather, the tenant indicated they did not respect the authority of the RTB to adjudicate the matter. This position is supported by the written evidence supplied to the hearing which is reproduced below on page 4 & 5 of the decision. While the tenant indicated they would not be pursuing the matter with the RTB as they felt the matter was better suited for the Supreme Court, I find the tenant's failure to participate in the hearing and provide an explanation on this point does not amount to a withdrawal of their application.

Rule of Procedure 7.3 states, "If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Without explicit instruction from the tenant regarding their intentions for their application, the hearing proceeded in their absence. Further, I will be considering the merits of the 10 Day Notice because the landlord asked that its validity be determined. As noted above, Rule of Procedure 5, an applicant tenant requires the written consent of the landlord to withdraw their application when a tenant has applied to dispute a landlord's notice to end tenancy. This written consent was not provided.

### Issue(s) to be Decided

Can the tenants cancel the notice?

Is either party entitled to a monetary award?

Can either party recover the filing fee?

### Background and Evidence

Landlord K.L. explained this tenancy began on August 15, 2018. Rent was \$3,800.00 per month and two deposits of \$1,900.00 each (pet and security) were collected at the outset of the tenancy and continue to be held in trust. A copy of the tenancy agreement was submitted in evidence by both parties. The landlord explained the tenants vacated

the property on February 17, 2021 but he was unsure if they were going to return to the property.

The landlord confirmed being served with the tenants' application for dispute and evidentiary packages, while explaining a 10 Day Notice to End Tenancy for unpaid rent (the "notice") was placed in the tenants' mailbox on December 31, 2020. A copy of the notice was provided in evidence by both parties. Pursuant to sections 89 & 90 of the *Act* the tenants are deemed served with the notice on January 2, 2021, three days after its delivery to the mailbox.

Both copies of the tenancy agreements entered in evidence by the parties are identical in their content. They show a tenancy starting August 15, 2018 with an end date of August 15, 2020. The agreements both indicate section 'D' as marked. This section says, "At the end of this time, the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term." Neither agreement indicates that a pet deposit was paid, however, the landlord provided undisputed testimony that both a pet and security deposit were paid. Both agreements show payment of a \$1,900.00 security deposit.

The tenants have applied for cancellation of a 10 Day Notice and for a monetary award of \$21,000.00. As noted above, tenant W.S. exited the teleconference at the outset of proceedings, therefore no testimony was provided by the tenants regarding their application. A copy of the notice was provided in the tenants' evidence. It shows unpaid rent of \$6,840.00 due on December 1, 2020. The notice appears to be signed and delivered on December 31, 2020.

In the tenants' evidence is a written statement which reads as follows [summarized]:

*Since our application was filed, we have moved out, and landlords L and K are in full possession of their property, depriving us of collecting the remains of our belongings throwing them into the garbage.*

*L and K illegally change locks on the property and threatened us with criminal charges of Trespassing if we set foot on the property.*

*...We will not be pursuing this application anymore at the RTB level as we believe this case falls in the Supreme Court Jurisdiction.*

*If L and K are still unsatisfied, they can seek remedy in the Supreme Court where all evidence can be look (sic) at and with proper time and due process.*

*RTB is simply not equipped to handle this procedure*

The landlords have applied for monetary award of \$22,164.69. K.L. the landlord said this represented unpaid rent for August and December 2020, January through March 2021, along with cleaning costs and junk removal. Copies of receipts and a monetary order worksheet were provided in evidence by the landlords.

#### Analysis – 10 Day Notice

While there is significant evidence that the tenants have vacated the property, I note no amendment was filed on their behalf seeking that their application to cancel the 10 Day Notice be withdrawn.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on the 10 Day Notice entered at the hearing as written evidence by both parties and the landlord's sworn testimony, I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. I find that the landlord's testimony regarding unpaid rent was consistent with the figure cited on the notice. The tenants' failure to attend this hearing and present evidence relating to their application rebutting the landlord's evidence leads me to order that their application to cancel the 10 Day Notice is dismissed without liberty to reapply.

Based on my decision to dismiss the tenants' application for dispute resolution and my finding that the landlord's 10 Day Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, January 12, 2021, and the landlord is entitled to an Order of Possession.

#### Analysis – Tenants' Application for a Monetary Award

The tenants have applied for a monetary award of \$21,000.00. No monetary order worksheet was provided in the tenants' application and the only explanation of their monetary application was found in a written statement summarized on page 4 & 5 of this decision. As no testimony was presented by the tenants in support of their application and little evidence was submitted in support of their application, I find the

tenants have failed to demonstrate their entitlement to a monetary award. For these reasons, I dismiss the tenants' application for a monetary award without leave to reapply.

The tenants must bear the cost of their own filing fee.

#### Analysis – Landlords' Application for a Monetary Award

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. As explained in *Policy Guideline #16* 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 landlords to prove entitlement to a claim for a monetary award.

In support of their application, the landlords provided a monetary order worksheet. This worksheet, along with undisputed testimony from landlord K.L. explained that the landlords were seeking unpaid partial rent for August 2020, along with unpaid rent for December 2020 and January through March 2021. In addition to an application for unpaid rent, the landlords sought costs associated with cleaning and junk removal. In support of these costs, the landlords provided several receipts in evidence.

I accept the landlords undisputed, sworn testimony that the tenants failed to pay rent as outlined in the landlords' monetary order worksheet. Further, I find the landlords provided sufficient evidence to demonstrate that a significant number of expenses related to cleaning and junk removal were incurred following the tenants' departure from the property. I note the tenants vacated the property in mid-February 2021, I find the landlords are not entitled to collect rent for March 2021 as the tenants were expected to have vacated the property pursuant to the 10 Day Notice issued in December 2020 and the landlords did not mitigate their loss. Using the offsetting provisions contained in section 72 of the *Act*, the landlords may retain the tenants' pet and security deposits in partial satisfaction for a return of the monetary award granted. As the landlords were successful in their application, they may recover the \$100.00 filing fee.

## Conclusion

The tenants' application is dismissed in its entirety without leave to reapply. Pursuant to section 55, 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 enforced as an Order of the Supreme Court of British Columbia.

I make a Monetary Order of \$14,497.50 in favour of the landlords as follows:

Item	Amount
Partial Unpaid rent for August 2020	\$3,040.00
Unpaid Rent for December 2020	3,800.00
Unpaid Rent January and February 2021 (2 x \$3,800)	7,600.00
Junk Removal	2,257.50
Cleaning costs	1,500.00
Less Pet and Security Deposit	(-3,800.00)
Return of Filing Fee	100.00
Total =	\$14,497.50

The landlords are provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 31, 2021

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Residential Tenancy Branch