



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKY AND STAR ENTERPRISE  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNC, FFT

### Introduction

On January 12, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, requesting to cancel a One Month Notice to End Tenancy for Cause, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

### Preliminary Matter

The Landlord’s representatives attended the conference call hearing; however, the Tenants did not attend at any time during the 34-minute hearing. The Tenants were emailed a copy of the Notice of a Dispute Resolution Hearing by the Residential Tenancy Branch on January 13, 2021; however, did not attend the teleconference hearing set for today at 11:00 a.m.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a 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.

As the Tenants did not call into the conference, I dismiss the Tenants’ Application without leave to reapply as the Tenants failed to attend the hearing to present the merits of their Application.

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 is compliant with the Act.

This hearing was conducted in the Tenant's absence and the issuance of an Order of Possession was considered along with the affirmed testimony and evidence as presented by the Landlord.

### Issue to be Decided

The Tenants' Application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and to cancel a One Month Notice to End Tenancy for Cause, has been dismissed. As such, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

### Background and Evidence

The Landlord provided the following undisputed testimony and a copy of the Tenancy Agreement:

The 1 year fixed-term tenancy was renewed in May of 2020. The rent was \$3,000.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,500.00.

The Landlord served the 10 Day Notice for Unpaid Rent, dated January 28, 2021 (the "10 Day Notice"), to the Tenants on January 28, 2021 by attaching it to the Tenants' door and sending it via registered mail. The 10 Day Notice had an effective move-out date of February 10, 2021.

The Landlord submitted a Rental Fee Statement and testified that the Tenants have not paid rent for the following months:

- June 2020                      \$3,000.00
- October 2020                \$3,000.00
- December 2020            \$1,000.00
- January 2021                \$3,000.00
- February 2021              \$3,000.00
- March 2021                 \$3,000.00
- April 2021                  \$3,000.00

The Landlord is requesting an Order of Possession for the rental unit and a Monetary Order for the unpaid rent.

### Analysis

Based on undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$3,000.00

by the first day of each month and that the Tenants have not fully paid rent from June 2020 through to April 2021.

As the Tenants failed to attend today's hearing, I dismiss the Tenants' Application without leave to reapply.

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 is compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the 10 Day Notice, issued by the Landlord on January 28, 2021, complies with the requirements set out in Section 52.

I have dismissed the Tenants' Application and found that the 10 Day Notice is compliant with the Act. For these reasons and because the Tenants may still be occupying the rental unit, I grant the Landlord an Order of Possession.

The Landlord requested a Monetary Order for the unpaid rent and although discussed during the hearing, I find the Landlord did not make an application for a Monetary Order to be heard at the same time as the Tenants' application to cancel the notices to end tenancy. Therefore, I am not authorized to grant the Landlord a monetary order as a result of the unsuccessful application by the Tenants.

Note to Landlord:

The *Residential Tenancy Act* has been amended as of March 25, 2021 and will allow arbitrators to grant a monetary order for unpaid rent if the tenant disputes a notice to end tenancy for unpaid rent, the notice complies and the arbitrator dismisses the application to dispute the notice. However, there are transition provisions for this legislative change which set out that it applies to applications submitted only after its in-force date. This means when a tenant fails to successfully dispute the notice an arbitrator cannot automatically issue a monetary order for unpaid rent if the application was made prior to March 25, 2021. In this case, the Tenants made application to dispute the One Month Notice on January 12, 2021. As such, the Landlord may

consider making an application for compensation for the unpaid rent via the Residential Tenancy Branch.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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: April 12, 2021

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Residential Tenancy Branch