



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, MNDL, MNDCL

### Introduction

The landlord applies for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to sections 46 and 55 of the *Residential Tenancy Act* (“Act”). In addition, they apply for compensation for unpaid rent and other costs, pursuant to sections 26 and 67 of the Act, and, to recover the cost of the application filing fee under section 72 of the Act.

The landlord, the landlord’s spouse, and a realtor for the landlord, attended the teleconference hearing on April 20, 2021 at 1:30 PM.

The tenants did not attend the hearing, which ended at 11:21 AM. However, I am satisfied based on the evidence – including, most importantly, a copy of the Canada Post registered mail tracking information for the mailed Notice of Dispute Resolution Proceeding package – that the tenants were served in compliance with Act, the *Rules of Procedure*, and, that they were therefore aware of the hearing.

### Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to compensation for unpaid rent?
3. Is the landlord entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in early January of 2018. Monthly rent is \$800.00 which is due on the first day of the month. The tenants did not pay a security or pet damage deposit.

On or about January 12, 2021, the landlord served the tenants with the Notice by way of registered mail. A copy of the proof of service was provided into evidence. A copy of the Notice was also in evidence, and all pages were completed. There is no evidence on file that, and the landlord is unaware of whether, the tenants ever disputed the Notice.

The landlord testified that, as of today, the tenants are in rent arrears in the amount of \$3,200.00. The landlord's application included additional claims for Canada Post costs, however, I explained that these are not costs that may be awarded under the Act. Further, the landlord anticipates additional costs, possibly running into several thousand dollars, related to cleaning up the property, not to mention the possibility of having to hire a bailiff. These are future (anticipated or possible) costs for which I cannot award. As I explained, however, the landlord is at liberty to file a further application for compensation after the tenancy has ended, to recoup any such costs.

### Analysis

Section 26 of the Act states 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 states that

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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.

And, a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

The tenants have done neither.

Section 46(5) of the Act states that

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

In this case, the Notice was served by registered mail and is presumed to have been received by the tenants on the fifth day after it was sent, as per section 90(c) of the Act. The tenants did not pay rent or make an application for dispute resolution within 5 days after receiving the Notice. As such, as per section 46(5) of the Act, I find the tenants are conclusively presumed to have accepted the tenancy ended on January 22, 2021 (corrected to January 27, 2021, taking into consideration the deeming provision).

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the tenants' failure to pay rent, and regarding the tenants' failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenants.

In respect of the landlord's claim for compensation, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation for unpaid rent of \$3,200.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

A total award of \$3,300.00 is granted to the landlord. A monetary order for this amount is issued in conjunction with this decision. A copy of the monetary order will need to be served on the tenants by the landlord.

### Conclusion

I grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$3,300.00, which must be served on the tenants. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 20, 2021

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Residential Tenancy Branch