



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 910951 BC LTD.  
Dorset Realty Group Canada Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-PP, MNDCL-S, MNRL-S, FFL

### Introduction

On March 3, 2021 the Landlords submitted an Application for Dispute Resolution (the "Application"), seeking relief pursuant to the *Residential Tenancy Act* (the "Act") for the following:

- a monetary order for unpaid rent;
- a monetary order for damage compensation or loss;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00A.M. on June 10, 2021 as a teleconference hearing. The Landlords' Agent L.M. attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that L.M. and I were the only persons who had called into this teleconference.

L.M. testified the Application and documentary evidence package was served to the Tenants by Registered Mail on March 12, 2021. The Landlords provided a copy of the Registered Mail receipts in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on March 17, 2021. The Tenants did not submit documentary evidence in response to the Application.

L.M. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
3. Should the Landlords be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
4. Are the Landlords entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
5. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

L.M. testified that the tenancy began on June 1, 2015. Rent in the amount of \$1,120.43 is due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$497.00, which the Landlords continue to hold. L.M. stated that the Tenants continue to occupy the rental unit.

L.M. testified the Tenants did not pay \$979.64 of January 2021 rent as well as no rent paid for February 2021. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 8, 2021 (the "10 Day Notice") with an effective vacancy date of February 23, 2021. L.M. stated that the 10 Day Notice was served to the Tenants by mail on February 8, 2021. The Landlords provided a copy of the 10 Day Notice in support.

L.M. testified that the Tenants did not pay the balance of unpaid rent which was indicated on the 10 Day Notice in the amount of \$2,100.87. L.M. stated that the Tenants also had a repayment plan which they have not complied with. L.M. stated that the Tenants currently have an outstanding balance of unpaid rent in the amount of \$2,232.59. If successful, the Landlords are also seeking the return of the filing fee and to retain the Tenant's security deposit. The Landlords provided a detailed rent ledger and monetary worksheet in support.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the

Tenants had a right under this Act to deduct any of their rent, I find that the Tenants are in breach of Section 26 of the Act.

Section 46 of the *Act* states 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.

I find based on L.M. 's uncontested testimony that the Landlords served the 10 Day Notice dated February 8, 2021 with an effective vacancy date of February 23, 2021 to the Tenants by mail on February 8, 2021. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants are deemed to have received the 10 Day Notice on February 13, 2021.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenants had until February 18, 2021 to either pay the outstanding rent owed to the Landlords in full, or make an Application for dispute resolution.

I accept L.M. 's undisputed testimony that after service of the 10 Day Notice, the Tenants failed to pay the full balance of rent owing in the amount of \$2,100.87. As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenants disputed the 10 Day Notice, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, February 23, 2021, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

In light of the above, I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$2,232.59 which includes the outstanding balance of rent from the repayment plan. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$1,835.59, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$2,232.59
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-( <i>\$497.00</i> )
<b>TOTAL:</b>	<b>\$1,835.59</b>

### Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$1,835.59. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 10, 2021

---

Residential Tenancy Branch