



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Landlords: OPRM-DR, OPR-DR-PP, FFL  
Tenants: CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlord’s agent, LM (“landlord”), attended the hearing by way of conference call, the tenants did not. I waited until 1:42 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 the landlord’s agent and I were the only one who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

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.

In the absence of any submissions from the tenants in this hearing, the tenants' application is dismissed without leave to reapply.

The landlord's agent gave sworn testimony that on March 15, 2021 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. The landlords included the tracking information for these packages in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with copies of the landlord's packages 5 days after mailing. The landlord's agent confirmed receipt of the tenants' application and package.

The landlord's agent provided undisputed testimony that the tenants were served with two 10 Day Notices on March 3, 2021 which were posted on the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notices on March 6, 2021, 3 days after posting.

The landlords requested to amend their original monetary claim for unpaid rent. Although the landlords had applied for a monetary Order of \$4,570.00 in their initial claim, since they applied another \$6,900.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlords' request to amend their original application from \$4,570.00 to \$11,470.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to recover the filing fee for this application?

## **Background and Evidence**

The landlord's agent testified to the following facts. This tenancy originally began as a fixed-term tenancy on September 1, 2019, and continued on a month-to-month basis after August 31, 2020. The monthly rent is currently set at \$2,300.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,200.00, which the landlords still hold.

The landlords served the tenants with two 10 Day Notices to End Tenancy on March 3, 2021. One 10 Day Notice was served for failing to make repayments in accordance with the amended repayment plan for affected rent, and another 10 Day Notice was served for the failure of the tenants to pay the March 2021 rent.

The landlord's agent testified that the tenants sent an electronic transfer on March 3, 2021 for the outstanding rent, but cancelled the payments on the same date before the landlords could accept the payments. As for the hearing date, the tenants owe the following in outstanding rent, totalling \$11,470.00. The landlords are requesting an Order of Possession as well as monetary orders for unpaid rent and recovery of the filing fee.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for March 2021	\$1,150.00
Unpaid Rent for April 2021	2,300.00
Unpaid Rent for May 2021	2,300.00
Unpaid Rent for June 2021	2,300.00
Amount Owed under Repayment Plan	3,420.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$11,570.00</b>

## **Analysis**

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 to the landlord an order of possession of the rental unit if

- (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.

I find that both 10 Day Notices comply with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notices, March 16, 2021. As the tenants have not vacated the rental unit, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the *Act*, in part, states as follows:

**Rules about payment and non-payment of rent**

**26 (1)** 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.

I am satisfied that the landlords had provided sufficient evidence to support that the tenants owe \$11,470.00 in unpaid rent for this tenancy. Accordingly, I allow the landlords a monetary order for that amount.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenants.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial in satisfaction of the monetary order.

**Conclusion**

I dismiss the tenants' application without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$10,370.00 Monetary Order in favour of the landlords under the following terms, which allows the landlord sto recover unpaid rent and the filing fee.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for March 2021	\$1,150.00
Unpaid Rent for April 2021	2,300.00
Unpaid Rent for May 2021	2,300.00
Unpaid Rent for June 2021	2,300.00
Amount Owed under Repayment Plan	3,420.00
Filing Fee	100.00
Less Security Deposit Held	-1,200.00
<b>Total Monetary Order</b>	<b>\$10,370.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 15, 2021

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Residential Tenancy Branch