



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0725694 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 16, 2021 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 05, 2021 (the "Notice")
- For reimbursement for the filing fee

The Agents for the Landlord appeared at the hearing. The Tenant appeared at the hearing late. The Tenant did not appear for Tenant B.N. The Tenant said Tenant B.N. has vacated the rental unit. The Agents said the Tenants are still living at the rental unit.

The Application does not include a request to recover unpaid rent. The Agents for the Landlord said they were seeking to recover unpaid rent. The Landlord had completed and submitted an Application for Dispute Resolution which shows that the Landlord is seeking to recover unpaid rent. The Agents confirmed this Application for Dispute Resolution was served on the Tenants and therefore I have considered whether the Landlord is entitled to recover unpaid rent.

I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agents testified that the hearing package and Landlord's evidence were sent by registered mail to the rental unit on May 27, 2021. The Agents confirmed Tracking Numbers 1 and 2 relate to this.

The Tenant denied receiving the hearing package and Landlord's evidence and denied receiving a notice card for registered mail. The Tenant confirmed they still live at the rental unit.

I am satisfied the Tenants live at the rental unit or could be served at the rental unit. I acknowledge that the Tenant said Tenant B.N. does not live at the rental unit; however, the Agents said Tenant B.N. does live at the rental unit and therefore I am not satisfied Tenant B.N. has advised the Landlord that they have moved or ended the tenancy as it relates to them. Given this, I am satisfied Tenant B.N. could be served at the rental unit.

I am satisfied based on the receipt in evidence that the registered mail packages were sent to the rental unit as the receipt shows the postal code for the rental unit on it.

I have looked Tracking Number 1 up on the Canada Post website which shows a notice card was left in relation to the package May 31, 2021 and that the package was "redirected to recipient's new address" on June 07, 2021. The website shows the package is available for pick-up. The Landlord's evidence shows this package was addressed to the Tenant.

I have looked Tracking Number 2 up on the Canada Post website which shows a notice card was left in relation to the package May 31, 2021 and that the package was available for pick-up until June 17, 2021. The Landlord's evidence shows this package was addressed to Tenant B.N.

In relation to the Tenant, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act") based on the testimony of the parties, registered mail receipts and Canada Post website information. I do not accept that the Tenant did not receive a notice card for the package because the Canada Post website shows a notice card was left May 31, 2021 and I find this information to be reliable. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package June 01, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service. I do not find it relevant that the Canada Post website shows that the package was "redirected to

recipient's new address" on June 07, 2021 because the website shows a notice card was left at the rental unit May 31, 2021 and the website shows the package is available for pick-up at the post office. Given this, I find the Tenant could have picked the package up at the post office further to the notice card left May 31, 2021.

I also note that the Tenant was aware of the hearing as the Tenant attended the hearing. Further, the Tenant confirmed they were able to address the issues raised in the Application when asked at the hearing.

In relation to Tenant B.N., I am satisfied pursuant to section 71(2)(b) of the *Act* that Tenant B.N. has been sufficiently served with the hearing package and Landlord's evidence based on the testimony of the Agents, registered mail receipts and Canada Post website information. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

I proceeded with the hearing. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence submitted and the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started December 16, 2020 and is for a fixed term ending November 30, 2021. Rent is \$1,850.00 per month due on the first day of each month. The agreement shows the Tenants paid a \$500.00 security deposit and \$200.00 pet damage deposit. The agreement is signed by all parties. The addendum states that the Tenants will do repairs in exchange for the damage deposit being reduced from \$925.00 to \$500.00.

The Agents testified that there was no pet damage deposit paid. The Agents sought to keep the \$500.00 security deposit towards unpaid rent.

The Tenant testified that a \$925.00 security deposit was paid.

The Notice states that the Tenant failed to pay \$1,350.00 in rent due May 01, 2021.

The parties agreed the Notice was served on the Tenant in person May 05, 2021.

The Agents confirmed the Tenants failed to pay \$1,350.00 of May rent which is reflected on the Notice. The Agents testified that the Tenants have not paid any rent since being issued the Notice.

The Tenant agreed \$1,350.00 of May rent was not paid. I outlined the six reasons tenants can withhold rent and asked the Tenant if any of these applied. The Tenant testified that they had to remove black mold from the rental unit. I read out the requirements of section 33 of the *Act* and asked the Tenant if they complied with this section. The Tenant acknowledged they had not complied with section 33(5) of the *Act*.

The Tenant agreed they have not paid rent since being issued the Notice.

The Tenant testified that they disputed the Notice; however, the Tenant could not provide a file number from the RTB for this dispute and I could not find a dispute of the Notice by the Tenant in the system.

The Agents testified that the Tenant told them they filed a dispute of the Notice; however, the Agents never received documents about this.

The Agents testified that \$3,200.00 in rent is currently outstanding.

The Tenant acknowledged rent was not paid for June. The Tenant testified that M.V. agreed to rent being paid other than on the first of the month.

M.V. denied that they agreed to rent being paid other than in accordance with the tenancy agreement.

The Agents sought an Order of Possession effective two days after service on the Tenants.

## Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants have failed to pay rent. The relevant portions of section 46 state:

- 46 (1) 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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...

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;

3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

I am satisfied based on the tenancy agreement that the Tenants were required to pay \$1,850.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I am satisfied based on the testimony of the parties that the Tenants did not pay \$1,350.00 of May rent.

I am not satisfied the Tenants had authority under the *Act* to withhold rent. The only basis for withholding rent provided by the Tenant was that the Tenant removed black mold from the rental unit. Even accepting that this amounts to an emergency repair, the Tenant acknowledged they did not comply with section 33(5) of the *Act* and therefore the Tenants were not entitled to withhold rent on this basis.

I am not satisfied based on the evidence provided that M.V. agreed to the Tenants paying rent other than in accordance with the tenancy agreement. I would expect such an agreement to be in writing given the importance of paying rent in a tenancy. There is no documentary evidence before me showing that M.V. agreed to the Tenants paying rent other than in accordance with the tenancy agreement.

I am satisfied the Tenants did not have authority under the *Act* to withhold rent and therefore section 46(3) of the *Act* does not apply. Further, the Tenants were required to pay all of May rent pursuant to section 26(1) of the *Act*.

Given the Tenants did not pay \$1,350.00 of May rent, I am satisfied the Landlord was entitled to serve the Tenants with the Notice pursuant to section 46(1) of the *Act*.

I am satisfied based on the testimony of the parties that the Notice was served on the Tenant in accordance with section 88(a) of the *Act* on May 05, 2021.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied based on the testimony of the parties that the Tenants did not pay any rent after the Notice was issued and therefore did not pay the outstanding rent within five days of receiving the Notice.

I am not satisfied the Tenant disputed the Notice as the Tenant could not provide a file number from the RTB for a dispute of the Notice and I could not find a dispute of the Notice by the Tenant in the system. I also note that the Tenant has not provided any valid basis for disputing the Notice.

Given the Tenants did not pay the outstanding rent or dispute the Notice, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended May 15, 2021, the effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by May 15, 2021.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenants.

I am satisfied based on the testimony of the parties that \$3,200.00 in rent is currently outstanding. I am not satisfied the Tenants had authority under the *Act* to withhold this rent. The Landlord is entitled to recover this rent.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is therefore entitled to monetary compensation in the amount of \$3,300.00. I issue the Landlord a Monetary Order in this amount pursuant to section 67 of the *Act*.

I decline to order that the Landlord can keep the security deposit towards unpaid rent. The parties disagreed about the amount paid for the security deposit. Further, the testimony of the Agents does not accord with the tenancy agreement as the agreement shows the Tenants paid a pet damage deposit. Neither party submitted documentary evidence showing the amount of the deposits held by the Landlord. Given this, I decline

to make orders in relation to the security deposit and the Landlord can deal with the security deposit in accordance with the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to a Monetary Order in the amount of \$3,300.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 05, 2021

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Residential Tenancy Branch