



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 20, 2021; and for an Order for the Landlord to Comply with the Act or tenancy agreement.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

The Tenants were provided with a copy of the Notice of a Dispute Resolution Hearing on March 23, 2021; however, the Tenants did not attend the teleconference hearing scheduled for July 5, 2021 at 11:00 a.m. (Pacific Time). The phone line remained open for 24 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord, who indicated that she was ready to proceed.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m.

on July 5, 2021, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for over 20 minutes; however, neither the Applicants nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenants' Application without leave to reapply**.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

#### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and the Landlord confirmed her address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In the hearing, the Landlord said that the Tenants had not served her with their Application or the Notice of Hearing package. The Landlord said that she heard about the hearing from the Residential Tenancy Branch.

#### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent, pursuant to section 55 (1.1) of the Act, and if so, in what amount?

#### Background and Evidence

The Landlord confirmed the details of the tenancy agreement, which was submitted by the Tenants. The Landlord confirmed that the fixed-term tenancy began on September 1, 2019 and was scheduled to run to August 31, 2021. The Landlord confirmed that pursuant to the tenancy agreement, the Tenants owe her a monthly rent of \$1,900.00 for the rental unit, due on the first day of each month. The Landlord confirmed that the Tenants paid her a security deposit of \$950.00, and no pet damage deposit.

The Landlord said that she served the Tenants with a 10 Day Notice, because they failed to pay their full rent owing in March 2021. She said they paid \$1,600.00 on March 21, 2021, the day after she served them with the 10 Day Notice for rent that was still owing from March 1, 2021. The Landlord said the Tenants never paid her the remaining \$300.00 they owed her for March 2021.

The Landlord said that she also served the Tenants with 10 Day Notices to End the Tenancy for Unpaid rent for the Tenants' failure to pay any rent in June 2021 or July 2021.

The Landlord said that the Tenants have blocked her telephone number, preventing her from contacting them by telephone or text.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**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.

. . .

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenants were properly served with the 10 Day Notice on March 20, 2021, in person.

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 the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before me that the Tenants had a right under the Act to deduct any portion of their rent that was due to the Landlord. In the hearing, the Landlord said that she was owed \$4,100.00 in unpaid rent as of July 1, 2021. This is derived from \$300.00 owing for March 2021, \$1,900.00 for June 2021, and \$1,900.00 for July 2021.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$1,900.00 is incorrect, as it was based on outstanding rent for March 2021, prior to the Tenants paying \$1,600.00 for March rent. As such, I find that the Tenants owe \$300.00 for March 2021. Further, I find that the Tenants are aware of the amount of rent they have and have not paid the Landlord; therefore, they are aware that they also owe the Landlord \$1,900.00 for each of June and July 2021.

I find from the evidence before me that the Tenants failed to pay the Landlord a total of \$4,100.00 in rent from March through July 2021. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount said to be owing in March 2021, I find it reasonable to amend the amount of the award sought by the Landlord, pursuant to section 55 (1.1) from the Tenants from \$1,900.00 for March 2021, to \$4,100.00 for \$300.00 in March and \$1,900.00 in each of June and July 2021.

The 10 Day Notice was signed and dated, it had the rental unit address and the effective vacancy date of March 29, 2021. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenants; as the 10 Day Notice was served in person on March 20, 2021, I find that the effective vacancy date should be March 30, 2021, and that it is automatically corrected to this date by section 53 of the Act.

I note that the Landlord did not include her own address for service on the 10 Day Notice; however, this is not something that is required of section 52 of the Act. Further, I note that the Tenants have the Landlord's email address and that they could have served her with the Notice of Hearing via email, pursuant to section 89(1)(f) of the Act. Accordingly, I find that the absence of the Landlord's address on the 10 Day Notice is not fatal to the Landlord's eligibility for Orders under the Act.

Based on the evidence before me, overall, I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

(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 the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy, finding it valid and enforceable. Accordingly, I find that the Landlord is eligible for a monetary award, pursuant to the Tenants' Application being dismissed in this proceeding.

The Tenants did not attend the hearing to testify as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$4,100.00 in rent owed for March through July 2021. Therefore, the Tenants' Application to cancel the 10 Day Notice is dismissed without leave to reapply.

#### Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$950.00 in partial satisfaction of the Landlord's monetary award.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** for the rental unit **effective two days after service of this Order on the Tenants**. This Order must be served on the Tenants by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 55 (1.1), I award the Landlord **\$4,100.00** from the Tenants for the unpaid rent that they owe the Landlord for March 2021 through July 2021. The Landlord is authorized to retain the Tenants' \$950.00 security deposit in partial satisfaction of this award. I grant the Landlord a Monetary Order of **\$3,150.00** for the remaining amount owing to the Landlord for the award. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

#### Conclusion

The Tenants are unsuccessful in their Application, as they failed to attend the participatory hearing today, and did not send an agent to act on their behalf. As such, I dismiss their Application without leave to reapply.

The Landlord attended the hearing and provided sufficient evidence to establish her eligibility for an Order of Possession of the rental unit, pursuant to section 55 of the Act, which Order the Landlord was granted. This **Order of Possession is effective two days after it is served on the Tenants.**

This Order must be served on the Tenants by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Further, the Landlord is awarded \$4,100.00 in unpaid rent from the Tenants, pursuant to sections 46 and 55(1.1) of the Act. The Landlord is authorized to retain the Tenants' \$950.00 security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order for the remaining amount owed to her by the Tenants of **\$3,150.00.**

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 05, 2021

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Residential Tenancy Branch