



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR OPR-DR-PP FFL

### Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession for unpaid rent and for unpaid rent repayment plan. On March 26, 2021, an adjudicator adjourned this matter to a participatory hearing which was held on this date, Monday July 12, 2021 at 11:00 a.m. Pacific Standard Time.

An agent for the landlord, HM (agent) and the landlord KM attended the teleconference as scheduled and provided affirmed testimony. The landlord confirmed HM was their agent. The agent also presented the documentary evidence. I have described the evidence relevant to the matters before me below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of Adjourned Hearing, application, documentary evidence was considered. The agent provided affirmed testimony that the Notice of Adjourned Hearing, application and documentary evidence were served on the tenants and that the tenant did not vacate the rental unit until the end of April 2021. Two registered mail receipts were submitted in evidence and according to the Canada Post registered mail tracking website (Canada Post Website) both were mailed with one package to each tenant on March 29, 2021. The registered mail tracking numbers have been included on the style of cause for ease of reference. The Canada Post Website confirmed that both packages were marked as “unclaimed” and both were returned to the sender.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. Accordingly, I find the tenants were deemed duly served on April 3, 2021, which is five days after both packages were mailed. I note that refusal or

neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

As the agent confirmed the tenants vacated at the end of April 2021, the agent confirmed that the landlords have possession back of the rental unit and as a result, I will not be considering the order of possession portion of the application.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenants do not have an email address the decision will be sent by regular mail to the tenants.

The agent testified that in addition to the rent claimed, the tenants have subsequently not paid the rent for March or April of 2021 and did not vacate the rental unit until the end of April 2021. As a result, the agent requested to amend the application to include rent owed March and April of 2021. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$6,600.00 to \$11,000.00, which will be described further below.

### Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent and unpaid rent based on the repayment plan under the Act?
- If yes, is the landlord also entitled to the recovery of the filing fee under the Act?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. The tenancy began on September 15, 2018. The monthly rent is \$2,000.00 and the agent testified that as of September 15, 2019, the landlord agreed to let the tenants pay monthly rent with \$1,000.00 due on the 15<sup>th</sup> day and the other \$1,000.00 on the last day of each month for a total of \$2,000.00 per month. The tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$500.00 at the start of the tenancy (\$1,500 in combined deposits), which the landlord continues to hold. The agent stated that due to the tenants failing to provide a written forwarding address since vacating the rental unit at the end of April 2021, the landlord is not claiming against the combined deposits until such time that the tenants provide their written forwarding address. The agent was informed that if the tenants fail to provide their written forwarding address within one year of the end of April 2021, the landlord is entitled to retain the combined deposits in full.

The agent referred to the Repayment Plan dated October 13, 2020 submitted in evidence and testified that the tenants continue to owe \$4,000.00 in unpaid rent based on the Repayment Plan. The agent also testified that the tenants failed to pay the additional rent as follows:

1. \$1,000.00 owing for January 15, 2021 to end of January 2021 rent.
2. \$2,000.00 owing for February 2021 rent
3. \$2,000.00 owing for March 2021 rent
4. \$2,000.00 owing for April 2021 rent

As a result, the landlord is claiming for \$4,000.00 in rent arrears from the Repayment Plan, plus \$7,000.00 in additional unpaid rent from January 15, 2021 to the end of April 2021.

According to the agent, the landlord does not want to offset the combined deposits as the tenants have failed to provide their written forwarding address.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony, and on the balance of probabilities, I find the following.

As the tenants were duly served and did not attend the hearing, I find this application to be undisputed by the tenants. Therefore, I accept the undisputed evidence before me that the tenants owe \$11,000.00 in unpaid rent and rent arrears as claimed and as described above. I find the landlord has met the burden of proof and I find the tenants

breached section 26 of the Act, which requires that tenants pay rent on the date that it is due in accordance with the tenancy agreement. Therefore, I grant the landlord **\$11,000.00** in rent arrears and unpaid rent as claimed.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act. I find the landlord has established a total monetary claim of **\$11,100.00** for unpaid rent, rent arrears and the filing fee. I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of \$11,100.00 owing by the tenants to the landlord.

### Conclusion

The landlords' application is fully successful.

The landlords have been granted a monetary order under section 67 of the Act in the amount of \$11,100.00, which must be served on the tenants. Should the landlords require enforcement of the monetary order the order must be served on the tenants first and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenants are cautioned that they may be liable for all costs related to enforcing the monetary order.

The decision and monetary order will be emailed to the landlord. The tenant will be sent the decision by regular mail as the landlord do not have an email address for them.

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 14, 2021

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Residential Tenancy Branch