



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      LL: OPL, OPR, MNRL-S, FFL  
                                 TT: CNR, CNL, LRE, OLC, FFT

### **Introduction**

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- an order of possession pursuant to section 55;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) pursuant to section 49;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served each of the tenants with the notice of application and evidence by registered mail sent on May 25, 2021. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the undisputed evidence I find that each of the tenants is deemed served with the landlord's materials on May 30, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord requested amending the amount of the monetary award sought. The landlord said that since the application was filed additional rent has come due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent becoming due is reasonably foreseeable I increase the landlord's monetary claim to \$19,101.64.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?  
Is the landlord entitled to a monetary award as claimed?  
Is the landlord entitled to recover their filing fee from the tenant?  
Are the tenants entitled to any of the relief sought?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in September 2019. The monthly rent is \$1,500.00 payable on the first of each month. The tenants are also responsible for paying for the utilities for the rental unit. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord issued a 10 Day Notice dated March 29, 2021 indicating a rental arrear of \$2,500.00. The landlord testified that it appears that the tenants have abandoned the

rental unit at some point prior to the hearing. The landlord seeks an Order of Possession and declaration that the tenancy has ended.

The landlord submits that there is an arrear of \$19,101.64 as at the date of the hearing. The landlord submitted into evidence their ledger showing rent and utilities owing and payments received. The landlord provided undisputed testimony about subsequent rent and utilities that has come due. The landlord said that the tenants have not made any payments for rent or utilities since February 2021.

### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides 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 re-apply.

Consequently I dismiss the tenants' application in its entirety without leave to reapply.

Section 55 of the *Act* provides that:

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 have dismissed the tenants' application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I accept the undisputed evidence of the landlord that there was a rental arrear of \$2,500.00 as at March 29, 2021 the date of the notice. Accordingly, I find that this tenancy ends in accordance with the 10 Day Notice and the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,500.00 on the first of each month and utilities for the rental unit. I accept the landlord's undisputed evidence that the tenants failed to pay the rent and utilities in breach of the tenancy agreement. I accept the evidence of the landlord that the total amount of arrears for this tenancy is \$19,101.64. I therefore issue a monetary award in the landlord's favour for unpaid rent and utilities of \$19,101.64 as at July 15, 2021, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$750.00 in partial satisfaction of the monetary award issued in the landlord's favour.

The landlord testified that the rental unit has been left in a state of disarray and they have incurred significant costs due to the damage caused by the tenants. As a claim for damages was not a part of the original application and it would be contrary to the principles of procedural fairness to add a new head of claim without notice I decline to consider this issue. The landlord remains at liberty to file a separate application for a monetary award for damages and loss should they choose.

Conclusion

I dismiss the tenants' application in its entirety without leave to reapply..

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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 monetary order in the landlord's favour in the amount of \$18,451.64, allowing for recovery of the rental and utility arrear and the filing fee and to retain the security deposit for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenants 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: July 15, 2021

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Residential Tenancy Branch