



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNDCL-S, MNRL-S, FFL

### Introduction

On March 30, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on July 15, 2021.

S.M. attended the hearing as an agent for the Landlord; however, neither Tenant attended at any point during the 13-minute teleconference. At the outset of the hearing, I advised S.M. that recording of the hearing was prohibited. He was reminded to refrain from doing so and he acknowledged this term. All parties in attendance provided a solemn affirmation.

He advised that he served a Notice of Hearing and evidence package to each Tenant by registered mail on April 1, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). He also testified that he served a copy of these packages to the Tenants by hand on April 2, 2021. Based on this undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were duly served the Landlord’s Notice of Hearing and evidence packages. As a result, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.M. advised that the tenancy started on December 1, 2019, that rent was established at an amount of \$975.00 per month, and that it was due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He submitted that he served the Notice to the Tenants on March 9, 2021 by hand. The Notice indicated that \$2,565.00 was owing on March 1, 2021 and that the effective end date of the tenancy was March 14, 2021. He referenced a rent ledger that was submitted as documentary evidence to support the amount of rent outstanding. He stated that the Tenants had been making partial payments since January 2020 and had accumulated a debt of \$2,565.00 as of March 1, 2021. In addition, he advised that the Tenants have not paid any rent since service of the Notice. Therefore, the Tenants are in arrears as follows:

- As of March 2021: \$2,565.00
- April 2021: \$975.00
- May 2021: \$975.00
- June 2021: \$975.00
- July 2021: \$975.00
- Total rent in arrears: **\$6,465.00**

In addition to an Order of Possession for unpaid rent, the Landlord is also seeking a Monetary Order in the amount of **\$6,465.00**.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent or utilities when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent or utilities in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenants were served the Notice on March 9, 2021 in person. According to Section 46(4) of the *Act*, the Tenants had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants received the Notice on March 9, 2021, they must have paid the rent in full by March 14, 2021 or disputed the Notice by Monday March 15, 2021 at the latest. As the Tenants did not pay the amount owing on the Notice or dispute the Notice within

the five-day time frame, and as the Tenants did not have authorization from the Landlord, or a valid reason under the *Act* to withhold the rent, I find that the Tenants breached the *Act* and jeopardized the tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice. As such, I find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

I also grant the Landlord a monetary award in the amount of **\$6,465.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears due March 1, 2021	\$2,565.00
Rental arrears for April 2021	\$975.00
Rental arrears for May 2021	\$975.00
Rental arrears for June 2021	\$975.00
Rental arrears for July 2021	\$975.00
Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$6,565.00</b>

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$6,565.00** in the above terms, and 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