



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, MNU-DR, FFL

### Introduction

On May 17, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession 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 and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.L. attended the hearing as an agent for the Landlord; however, neither Tenant attended the hearing at any point during the 23-minute teleconference. At the outset of the hearing, I informed S.L. that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term. As well, she provided a solemn affirmation.

S.L. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on June 17, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that these packages were not picked up by the Tenants, and they were eventually returned to sender.

Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been deemed to have received the Notice of Hearing and evidence packages five days after they were mailed out. As such, 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.L. advised that the tenancy started on October 1, 2020, that rent was established at an amount of \$4,500.00 per month, and that it was due on the first day of each month. A security deposit of \$2,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served by being posted to the Tenants' door on April 14, 2021. She also included a picture and a signed proof of service form to corroborate service. The Notice indicated that \$4,500.00 was owing for rent on April 1, 2021 and that the Tenants failed to pay \$362.16 for utilities owing following a written demand given on March 13, 2021. The effective end date of the tenancy was noted as April 27, 2021 on the Notice.

She advised that the Tenants were paying rent through the Landlord's automatic rent payment system, but the Tenants cancelled this account and their last rent payment was for March 2021. She stated that the Tenants have not paid any rent for April, May, June, or July 2021 and in addition to an Order of Possession, the Landlord is seeking a Monetary Order for unpaid rent in the amount of **\$18,000.00**. A copy of the Tenants' rent ledger was submitted as documentary evidence to support this claim.

As well, she advised that as per the tenancy agreement, the Tenants were responsible for utilities, but the Tenants had failed to pay for outstanding utilities. She stated that a written demand for this amount was served to the Tenants on March 13, 2021; however, this was not submitted as documentary evidence for consideration. She referenced three emails sent to the Tenants, on February 11, 2021 or prior to that, requesting outstanding utilities, but none of the amounts in these emails totalled **\$362.16**. There was no documentary evidence submitted to corroborate that this specific amount was

owing, other than a line in the Tenants' rent ledger indicating this. S.L. testified that other than the accounting department calculating this amount, she could not speak to how the request for this amount of outstanding utilities was formulated.

### 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 when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent 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.

In addition, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Utilities 30 days after a written demand was given for the outstanding utilities. Once this Notice is received, the Tenants would have five days to pay the 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 deemed to have received the Notice three days after it was posted on April 14, 2021. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities 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 Notice was deemed to have been received on April 17, 2021, they must have paid the rent and utilities in full or disputed the Notice by April 22, 2021 at the latest. As the undisputed evidence is that the Tenants did not pay April 2021 rent and did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlord’s Notice for unpaid rent 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 and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is are entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenants are in arrears for the rent up until the date of the hearing, I grant the Landlord a monetary award in the amount of **\$18,000.00**.

With respect to the unpaid utilities, I do not find that the Landlord has provided sufficient documentary evidence to specifically outline how the Tenants were in arrears for the \$362.16. While it is apparent that the Tenants were responsible for the utilities, I am not satisfied that any compelling or persuasive documentary evidence has been submitted to corroborate this exact amount. As such, I dismiss this claim with leave to reapply.

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 for April 2021	\$4,500.00

Rental arrears for May 2021	\$4,500.00
Rental arrears for June 2021	\$4,500.00
Rental arrears for July 2021	\$4,500.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$18,100.00</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 **\$18,100.00** 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 22, 2021

---

Residential Tenancy Branch