



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: CNL-4M, MT, CNR  
                             LL: OPL-4M, MNR, OPR-DR, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants have made two Applications for Dispute Resolution. One was made on April 27, 2021 and the other on May 22, 2021 (the “Tenants’ Applications”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order to cancel a Four Month Notice to End Tenancy for Demolition (the “Four Month Notice”) dated December 27, 2020;
- more time to extend the time limit established by the *Act*, to make an Application to cancel the Four Month Notice; and
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 21, 2021 (the “10 Day Notice”);

The Landlords have submitted four Applications for Dispute Resolution which were made on May 11, 12, 27, and 31 2021 (the “Landlords’ Applications”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent;
- an order of possession in relation to the Four Month Notice; and
- an order granting recovery of the filing fee.

The Tenants, B.H. and M.S., and the Landlord R.D. attended the hearing at the appointed date and time. At the start of the hearing, the parties acknowledged service and receipt of their respective Applications and documentary evidence packages. As

there were no issues raised, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day, pursuant to Section 46 of the *Act*?
2. Are the Tenants entitled to an order cancelling the Four Month Notice, pursuant to Section 49 of the *Act*?
3. Are the Tenants entitled to more time to extend the time limit established by the *Act*, to make an Application to cancel the Four Month Notice, pursuant to Section 66 of the *Act*?
4. If the Tenants are not successful in cancelling the 10 Day Notice or the Four Month Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
5. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
6. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2020. The Landlord stated that he purchased the rental property from the previous owner in March 2021, at which point he became the Landlord. The parties agreed that currently, the Tenants are required to pay rent in the amount of \$1,000.00 to the Landlord on the first day of each month. The parties agreed that the Tenants did not pay a security deposit and the Tenants continue to occupy the rental unit.

The parties testified and agreed that on or about the third week of April, the Landlord attended the rental unit and notified the Tenants that he purchased the rental property and that he was the new Landlord. The Landlord stated that the previous landlord had served a 4 Month Notice for demolition and expected the Tenants to vacate the rental property on May 1, 2021 as it was a condition of the sale. The Landlord stated that the Tenants did not vacate the rental unit and have not paid the Landlord any rent since he purchased the rental property in March 2021.

The Landlord stated that he subsequently served the Tenants with a 10 Day Notice dated May 21, 2021 with an effective date of June 2, 2021 by posting it to the Tenants' door and by Canada Post Registered Mail on May 21, 2021. The Landlord testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$3,000.00 to the Landlord which was due on May 1, 2021.

The Landlord stated that after serving the 10 Day Notice, the Tenants have not paid any rent to the Landlord. The Landlord stated that the Tenants currently owe him rent in the amount of \$6,000.00 for March to August 2021.

The Tenants testified that they received the 10 Day Notice on May 22, 2021 and applied to dispute the Notice the same day. The Tenants testified that they had provided the previous landlord with post dated cheques in the amount of \$3,000.00 each as they paid rent for three months at a time on each cheque. The Tenants stated that they were unaware that the rental property had sold until April 2021 when they met the new Landlord.

The Tenants stated that their rent cheques were being deposited by the previous owner, therefore, they were under the impression that the rent money would be forwarded to the new Landlord. The Tenants stated that once they received the 10 Day Notice, they requested that the bank cancel their cheques. The Tenants stated that they are still waiting on the bank to cancel the cheques before they start paying the new Landlord.

The Tenants acknowledged that they have not yet paid any rent to the new Landlord, however, are seeking to cancel the 10 Day Notice given they were usure of the situation. If successful, the Landlord is seeking an order of possession, a monetary order for unpaid rent, and the return of the filing fee.

### Analysis

Section 26 of the Act states that a Tenant must pay the 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 this Act to deduct all or a portion of the rent.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

The Landlord served the Tenants with the 10 Day Notice dated May 21, 2021 with an effective vacancy date of June 2, 2021. The Tenants confirmed having received the 10 Day Notice on May 22, 2021. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

Accordingly, pursuant to section 46(4) of the Act, the Tenants had until May 27, 2021 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I find that the Tenants disputed the 10 Day Notice on May 22, 2021, therefore, they are within 5 day time limit to dispute the 10 Day Notice.

The Tenants testified that they provided the previous landlord with post dated cheques in the amount of \$3,000.00 each, as they paid rent three months in advance. The Tenants stated that the rent was paid to the previous landlord, as they were unaware that the rental property had sold.

In this case, I find that they Tenants have provided insufficient evidence such as a bank statement to demonstrate that they paid any rent at all for March, April, and May 2021. I accept that the Tenants were not aware that the rental property had sold on March 1, 2021, however, after meeting the new Landlord in April 2021, the Tenants should have

made arrangements to pay rent to the new Landlord moving forward. The Tenants made no effort to pay at the very least, May 2021 rent to the Landlord.

I further accept based on the Tenants' testimony that no rent has been paid to the Landlord for June, July and August 2021. I do not accept the Tenants' claim that they were waiting on their cheques to be cancelled by the bank before they start paying rent to the Landlord.

I find that the Tenants have provided insufficient evidence to demonstrate that they paid any amount of unpaid rent as indicated on the 10 Day Notice to the Landlord. In light of the above, I dismiss the Tenants' Application to cancel the 10 Day Notice without leave to reapply. Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an **order of possession effective 2 (two) days**, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find the Landlord has established an entitlement to a monetary award for unpaid rent from March to August 2021 in the amount of **\$6,000.00**. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application.

As I have found that the Landlord was successful in gaining an order of possession in relation to the 10 Day Notice, I find that it is not necessary to determine the validity of the Four Month Notice. As such, I dismiss the Tenant's Application to cancel, and the Landlord's Application for an order of possession in relation to the Four Month Notice.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$6,100.00.

Conclusion

The Tenants have breached Section 26 of the *Act*. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$6,100.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 31, 2021

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Residential Tenancy Branch