



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL: **MNR-DR, OPR-DR, FFL**  
                                 TT: **CNR, RP, LAT, LRE, FFT, CNL, OLC**

### Introduction

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

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- An Order of Possession pursuant to section 55; 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 pursuant to section 46;
- An order that the landlord perform repairs pursuant to section 33;
- Authorization to change the locks to the rental unit pursuant to section 70;
- An order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- Authorization to recover the filing fee from the landlord pursuant to section 72;
- Cancellation of the 2 Month Notice to End Tenancy for Landlord’s Use pursuant to section 49; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member and counsel.

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

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

#### Issue(s) to be Decided

Should the 10 Day be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to any of the relief sought?

Is the landlord entitled to a monetary award as 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 parties agree on the following facts. This periodic tenancy began in 2019. The monthly rent is \$2,500.00 payable on the first of each month. No security or pet damage deposit was collected.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated February 9, 2021. The reason provided on the notice for the tenancy to end is that the landlord has entered an agreement to sell the property and the purchasers requested that the landlord issue the notice to the tenants. The parties agree that the tenants were allowed to withhold rent for the month of February pursuant to the *Act*. The tenant paid the full rent for March 2021.

The landlord submits that there was an agreement between the parties where the tenants would be forgiven rent for the month of April 2021 provided if they vacated the rental unit by April 9, 2021. A copy of the correspondence referencing the agreement was submitted into evidence.

The tenants did not vacate the rental unit and did not pay rent for April 2021. The tenants submit that they believe they were entitled to withhold rent regardless of the fact that they have already been provided compensation in the amount equivalent to one month's rent by being allowed to withhold February rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent which is dated and with an effective date of April 23, 2021 indicating the unpaid rent due on April 1, 2021 of \$2,500.00. The landlord submits that the date provided on the 10 Day Notice is a typographic error and it should be April 12, 2021, the date it was issued. The tenants confirmed receipt of the 10 Day Notice on April 12, 2021 and filed their application for dispute resolution on April 14, 2021.

The landlord served the tenants with a subsequent 2 Month Notice dated June 18, 2021. The landlord submits that the notice was issued as they entered a new contract for purchase and sale of the property with different purchasers who requested that a notice be issued pursuant to section 49 of the Act.

The tenants confirm that they have not paid rent for the months of April, May, June, July, August 2021. The landlord submits that there is an arrear of \$12,500.00 as at the date of the hearing. The landlord further submits that as the tenants did not comply with the 2 Month Notice and vacate the rental unit their entitlement to compensation in an amount equivalent to one month's rent has been waived and the tenants owe rent for February 2021 in the amount of \$2,500.00.

Both tenants gave lengthy testimony complaining about the landlord, the condition of the rental unit, alleging a loss of quiet enjoyment of the rental unit and identifying what they believed to be inconsistencies and deficiencies in the documentary materials. The tenants stated that they have called the police on a number of occasions to make complaints about the landlord, intend to pursue criminal and civil action against the landlord, and that they do not intend to comply with any orders of possession and will seek a stay of any order through the courts.

## Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on April 12, 2021, and filed a notice of dispute application on April 14, 2021 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have not paid rent for February 2021 and April 2021.

Section 51(1) of the *Act* provides that:

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

While section 51(1.1) provides that a tenant who is entitled to compensation may withhold the amount authorized from the last month's rent, there is no right pursuant to the *Act* allowing a tenant more than one month's rent under the tenancy agreement.

In the matter before me the undisputed evidence of the parties is that the tenants withheld rent for February 2021. I therefore find that the tenants had already been provided compensation in the amount equivalent to one month's rent and had no basis to withhold further payments.

I find the tenant's submission that regardless of prior compensation received they retained the right to withhold rent for April 2021 to be without any basis in the *Act* and have no merit. I find the correspondence between the parties referencing waiver of the rent for the month of April to be an offer made by the landlord contingent on the tenants providing vacant possession of the rental unit by April 9, 2021. The tenants did not vacate the rental unit and therefore were not entitled to a waiver of April rent.

Pursuant to 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement.

I find the tenants' lengthy testimony to have little support in the documentary materials, consist of subjective complaints and accusations and in any event does not give rise to a basis to withhold paying monthly rent as required.

I find that the tenants were obligated to pay rent in the amount of \$2,500.00 on April 1, 2021. I accept the undisputed evidence of the parties that the tenant did not pay rent as required. I am satisfied that the 10 Day Notice complies with the form and content requirements of the Act as it is in the prescribed form, identifies the rental unit address, the parties and the basis for the tenancy to end. While there is a typographic error on the dates of the notice, I find that pursuant to section 53 of the Act any incorrect effective dates are automatically changed and there was no confusion or misunderstanding on either party. Consequently, I find that the 10 Day Notice issued by the landlord to be effective and issue an Order of Possession in their favour.

As the effective date of the notice has passed I issue an Order effective 2 days after service on the tenants.

As this tenancy is ending I find it unnecessary to make a finding on the portions of the tenants' application pertaining to an ongoing tenancy and dismiss the balance of the tenants' application without leave to reapply. I note that the tenancy is ending in accordance with the 10 Day Notice and the subsequent 2 Month Notice of June 18, 2021

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 accept the undisputed evidence of the parties that the tenants have not paid rent for the months of February, April, May, June, July and August 2021. I accept the undisputed evidence of the parties that monthly rent for this tenancy is \$2,500.00.

As noted above section 51(1) provides that a tenant is entitled to compensation in an amount equivalent to one months' rent when they receive a notice to end tenancy under section 49. The tenants withheld rent for February 2021 pursuant to this section. I find no authority under the *Act* that allows me to find that the tenant's right to compensation is retroactively rescinded to allow a landlord to claim back this amount. I am not satisfied that the tenants' failure to vacate the rental unit in accordance with the 2 Month Notice of February 9, 2021 retroactively allows the landlord to claim unpaid rent.

I further accept the submission of the parties that the 2 Month Notice of February 9, 2021 was subsequently withdrawn as the basis for the tenancy to end, the sale of the property, did not complete. I do not find that the subsequent withdrawal of the 2 Month Notice or the tenant's failure to abide by the notice and vacate the rental unit gives rise to a right to claim back compensation which was issued under this section.

Therefore, I find that the tenants were obligated to pay monthly rent pursuant to the tenancy agreement for the months of April, May, June, July and August, 2021. I accept the undisputed evidence of the parties that monthly rent is \$2,500.00 and issue a monetary award in the landlord's favour in the amount of \$12,500.00 accordingly.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant 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 \$12,600.00, allowing for recovery of the unpaid rent and filing fees. 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: August 19, 2021

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Residential Tenancy Branch