



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Columbia Property Management  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      TT: CNR  
                                 LL: MNRL-S, OPU, MNDCL-S, FFL

### **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 unpaid rent and utilities, damages and loss pursuant to section 67;
- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenant 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;

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 corporate landlord was represented by their agent (the “landlord”) who 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 hearing and evidence by registered mail sent on July 28, 2021. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on August 2, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord indicated that since the application was filed additional rent and utility payments have come due. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlords' monetary claim from \$7,024.73 to \$7,148.98 as the additional amount of rental arrears could be reasonably anticipated.

#### Issue(s) to be Decided

Are the tenants entitled to any of the relief sought?

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 the filing fee from the tenants?

#### Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This tenancy began on October 1, 2020. The monthly rent is \$1,350.00 payable on the first of each month. The tenants are also responsible for paying 60% of the Hydro and Gas for the rental building. A copy of the signed tenancy agreement was submitted into evidence.

The tenants failed to pay rent and utilities as required under the tenancy agreement and there was an arrear of \$1,227.48 as at May 18, 2021 when the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The landlord submitted the tenant ledger as well as copies of correspondence where the landlord makes written demand for the unpaid utilities on January 18, 2021, March 17, 2021, and April 13, 2021.

The landlord testified that the tenants have not made full payment of the arrears and additional rent and utilities has come due since the issuance of the 10 Day Notice. The landlord testified that as at the date of the hearing the total rent and utilities arrear is \$7,148.98.

### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 9:30am. 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 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 tenant's 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 agent of the corporate landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

I am satisfied with the landlord's evidence that there was unpaid rent and utilities with gave rise to the issuance of the notice. I further find that pursuant to section 46(6) the tenancy agreement provides that utilities are payable and that the utility charges remained unpaid for over 30 days after the tenants were issued written demand by the landlord.

Therefore, I find that 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 \$1,350.00 on the first of each month and to pay their share of the utilities pursuant to the tenancy agreement. I accept the undisputed evidence that the tenants failed to pay rent and utilities in breach of the tenancy agreement and that there is an arrear of \$7,148.98 as at September 23, 2021, the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour for that amount pursuant to section 67 of the *Act*.

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

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

### Conclusion

The tenants' application is dismissed 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 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 \$5,898.98, allowing for recovery of the unpaid rent and utilities and filing fee and to retain the security and pet damage deposit for the 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: September 20, 2021

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Residential Tenancy Branch