



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ANSTEL HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, OPR, FFL

### Introduction

On July 12, 2021, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession for the rental unit, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee.

The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

### Preliminary Matter

The Landlord’s Agent (the “Landlord”) attended the conference call hearing; however, the Tenants did not attend at any time during the 17-minute hearing. The Landlord testified that the Notices of Dispute Resolution Proceeding and related evidence were sent to both Tenants, via registered mail, on August 23, 2021. The Landlord provided the Canada Post tracking numbers, as noted on the face page of this Decision. The Canada Post website provided information that the packages were both delivered. Based on the Landlord’s affirmed evidence, I find that the Tenants are deemed to have received the Notices of Dispute Resolution Proceeding on August 28, 2021, in accordance with Sections 89 and 90 of the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a 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.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

### Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

The Landlord provided the following undisputed testimony:

The fixed-term tenancy began on July 1, 2015, was renewed in 2016, and then continued as a month-to-month tenancy. The rent was \$640.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$312.50.

The Landlord served the 10 Day Notice for Unpaid Rent, dated June 25, 2021 (the “10 Day Notice”), to the Tenants on June 25, 2021, by attaching it to the Tenants’ door. The 10 Day Notice had an effective move-out date of July 10, 2021.

The Landlord submitted a ledger and testified that the Tenants began to pay partial rent payments in January 2021 and that by June 1, 2021 had an outstanding rental arrears balance in the amount of \$2,035.00. The Agent testified the Tenants have failed to pay rent for the months of July, August and September 2021 and are still occupying the rental unit. The Landlord is requesting an Order of Possession for the rental unit and a Monetary Order, in the amount of \$3,955.00, for the unpaid rent.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenants did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Tenant had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for compensation of unpaid rent in the amount of \$3,955.00.

Section 46(5) of the Act authorizes a landlord to 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. The tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the tenant does not pay the rent or make an Application for Dispute Resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I find the Tenants are deemed served with the 10 Day Notice on June 28, 2021, pursuant to Section 88 and 90 of the Act. I find that the move-out date, as stated on the 10 day Notice, is July 10, 2021.

I find the Tenants failed to pay the rent in full, as identified as owing in the 10 Day Notice, within five days of receiving the 10 Day Notice, pursuant to section 46(4) of the Act.

I have no evidence in front of me that the Tenants have made an Application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the Act, the Tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the 10 Day Notice. In this case, this required the Tenants to vacate the premises by July 10, 2021. As that has not occurred, I find that the Landlord is entitled to a two-day Order of Possession, in accordance with section 55 of the Act.

Before issuing the Landlord an Order of Possession, I must consider section 52 of the Act which requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the 10 Day Notice, issued by the Landlord on June 28, 2021, complies with the requirements set out in Section 52.

I find that the Landlord's Application has merit, and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit in the amount of \$312.50, in partial satisfaction of the monetary claim.

<b>Item</b>	<b>Amount</b>
Unpaid rent from January to September 2021	\$3955.00
Filing Fee	100.00
Less security deposit	-312.50
<b>Total Monetary Order</b>	<b>\$3,742.50</b>

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$3,742.50.

### Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$3,742.50. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 16, 2021

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Residential Tenancy Branch