



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      Tenants' application: CNR, RR, OLC, RP  
Landlords' application: OPU-DR, MNU-DR, FFL, MNDL, MNRL, MNDCL

### **Introduction**

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an order for emergency repairs, pursuant to section 33.

The landlords' application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:46 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. Landlord FY (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. FY represents landlord YA. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

#### Preliminary Issue – Service of the Landlords' Application

The landlord affirmed he served the notice of hearing and the evidence (the materials) by registered mail on July 29, 2021. The landlord served the amendment and a second package of evidence on August 11, 2021. All the packages were mailed to the rental unit's address. The tracking numbers are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the proof of registered mail, I find the landlord served the materials, the amendment and the second package of evidence in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on August 03, 2021 and the amendment and second package of evidence on August 16, 2021, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue - Tenants' Application Dismissed with Leave to Reapply

The landlord affirmed he did not receive the notice of hearing for the tenants' application. The landlord called the Residential Tenancy Branch and learned that the tenants submitted an application.

Based on the landlord's convincing testimony, I find the tenants did not serve the notice of hearing in any of the ways described in section 89 of the Act. The tenants' application can not proceed fairly when the respondent has not been notified of the application.

I dismiss the tenants' application with leave to reapply. Leave to reapply is not an extension of the timeline to reapply.

### Issues to be Decided

Are the landlords entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?
3. a monetary order for loss?
4. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on January 01, 2020. Monthly rent is \$1,750.00, due on the first day of the month. At the outset of the tenancy the landlord collected and holds a security deposit (the deposit) in the amount of \$875.00. The tenancy agreement was submitted into evidence. It indicates monthly rent is \$1,750.00 and that the tenants must pay 65% of the electricity, gas bills and utility (garbage, water and sewer) bills.

The landlord served the demand letter dated June 03, 2021 and copies of the bills by attaching them to the tenants' door on June 03, 2021. It states:

Here is the new balance of the bills you owe:

$1,429.26 - 308.70 + 39.18 = \$1,159.94$

Hydro:  $882.00 \times 35\% = 308.70$

Gas:  $60.29 \times 65\% = 38.18$

So total amount was \$1,159.95. It was long overdue. Please pay ASAP.

Thanks,

Landlord

The landlord stated the tenant paid \$250.00 for the utility bills on June 25, 2021. The landlord served the demand letter dated July 08, 2021 and copies of the bills by attaching them to the tenants' door on July 08, 2021. It states:

The two new bills are as bellow, attached copies:

City user rate:  $294.88 \times 65\% = 191.74$

Gas:  $60.27 \times 65\% = 39.18$

So the new balance owe was:  $\$909.94 + 191.74 + 39.18 = \$1,140.86$ . Please pay the bills as soon as possible.

The landlord served the Notice in person on July 08, 2021. A copy of the July 08, 2021 Notice was submitted. It indicates: "\$1,750.00 in unpaid rent due on July 01, 2021 and \$909.94 in utilities due on June 03, 2021". The effective date is July 18, 2021.

The landlord testified the tenants continue to occupy the rental unit and have not paid rent in July, August and September 2021 or the utility bills.

The landlord served the August 10, 2021 demand letter and copies of the bills by mail on August 10, 2021. It states:

In addition to the bill payment request (posted it on your main door on July 08<sup>th</sup>, 2021 with bill copies), here is another Gas bill just came in, attached here (\$78.22).

$\$1,140.86 + (78.22 \times 65\%) = 1,191.70$ .

The new bill with other two bills at last request attached here and will be part of the amendment to dispute file [redacted for privacy].

The landlords are claiming for an order of possession and a monetary order for the unpaid rent of July, August and September 2021 in the amount of \$5,250.00.

The landlords are claiming for unpaid utility bills in the amount of \$1,191.70.

The landlords are claiming compensation for damages in the amount of \$900.00. The landlord inspected the rental unit on August 03, 2021 and noticed the tenants painted the bedroom wall. The landlord submitted pictures of the bedroom wall. The landlords' amendment form states: painting and drawing on bedroom walls need to be removed and repainted, junk removal and cleaning cost estimated \$900.00." The landlord said it will cost roughly \$900.00 to paint the bedroom wall.

The landlord submitted into evidence a monetary order worksheet.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

### Unpaid rent

Based on the landlord's convincing testimony, I find the landlord served the Notice on July 08, 2021, in accordance with section 88(1) of the Act.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontested testimony that the tenants must pay monthly rent of \$1,750.00 on the first day of the month and that the tenants did not pay rent in July, August and September 2021.

Based on the landlord's undisputed testimony, I find the tenants are in arrears for July, August and September 2021 rent in the amount of \$5,250.00.

As such, I award the landlords \$5,250.00.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

The tenants have not disputed the Notice and are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, July 18, 2021.

#### Utility Bills

Section 46(6) of the Act states:

If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and  
(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,  
the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Based on the landlord's undisputed testimony, the written demand letters, the tenancy agreement and the utility bills, I find the tenants must pay 65% of the electricity, gas bills and utility (garbage, water and sewer) bills, the landlord served three written demand letters and the tenants did not pay utility bills due more than 30 days ago.

I find the tenants breached the tenancy agreement by not paying the utility bills and the landlords suffered a loss of \$1,191.70.

As such, I award the landlords \$1,191.70 in compensation for this loss.

### Painting

Section 32(3) of the Act states: “A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

Residential Tenancy Branch Policy Guideline 1 states:

#### **PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the undisputed landlord's testimony and the photographs submitted, I find, on a balance of probabilities, the tenants breached section 32(3) of the Act by failing to paint the damaged walls and the landlords incurred a loss.

The landlord's testimony about the repair cost was vague. The landlord did not submit an invoice or written quote. I find reasonable to award the landlords compensation in the amount of \$200.00 for painting.

As such, I award the landlords \$200.00 in compensation for painting.

### Filing fee and summary

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security or pet damage deposit held by the landlord. I order the landlords to retain the \$875.00 deposit.

In summary:

July, August and September 2021 rent (\$1,750.00 x 3)	\$5,250.00
Utility bills	\$1,191.70
Painting	\$200.00
Filing fee	\$100.00
Sub-total	\$6,741.70
Deposit	-\$875.00
<b>Monetary award</b>	<b>\$5,866.70</b>

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlords 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.

Pursuant to sections 26, 67 and 72 of the Act, I authorize the landlords to retain the \$875.00 deposit and grant the landlords a monetary order in the amount of \$5,866.70.

The landlords are provided with this order in the above terms and the tenants must be served with this order. 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 03, 2021

---

Residential Tenancy Branch