



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR-DR, MNR-DR, FFL

### Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing.

The reconvened hearing was held to consider the Landlord's application for an Order of Possession for Unpaid Rent, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that in May of 2021 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in May of 2021 was served to each Tenant. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On June 07, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence and the Notice of this reconvened hearing was served to the Tenants, via registered mail, in June of 2021. The Tenants acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct address of the rental unit, which includes the unit number.

#### Preliminary Matter #2

The Landlord applied to amend the Application for Dispute Resolution to include all rent that is currently due.

I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

#### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act (Act)*?

Is the Landlord entitled to a monetary Order for unpaid rent?

#### Background and Evidence

The Landlord stated that this tenancy began in 2019. The male Tenant stated that it began in 2018.

The Landlord and the Tenants agree that:

- When this tenancy began the Tenants paid rent on an annual basis;
- After approximately two years, the parties agreed the Tenants would pay monthly rent of \$2,200.00;
- In March of 2021, the Tenants only paid rent of \$1,150.00, leaving a balance due of \$1,050.00; and

- The Tenants did not pay any rent for the period between April 01, 2021 and September 23, 2021.

The Landlord stated that the rent is due by the 4<sup>th</sup> day of each month. The male Tenant stated that it is due by the 6<sup>th</sup> day of each month. The tenancy agreement declares it is due by the 4<sup>th</sup> day of each month.

The Landlord stated that she placed a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in the Tenants' mailbox on May 01, 2021. The female Tenant stated that this Notice was located in their mailbox on May 05, 2021 or May 06, 2021.

The parties agree that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by May 11, 2021 if the outstanding rent of \$1,050.00 is not paid within five days of receiving the Notice.

The male Tenant stated that rent of \$1,000.00 was paid to the Landlord "around" May 05, 2021. The Landlord stated that the overdue rent of \$1,050.00 has never been paid. The male Tenant stated that the Tenants did not file an Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The male Tenant stated that the rent was not paid for any period after April 01, 2021 because of various deficiencies with the rental unit, such as a faulty garburator and air conditioning system.

The male Tenant stated that the rental unit was vacated on September 22, 2021 and the keys were left inside the unit. The Landlord stated that she was not aware the unit had been vacated.

### Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord when it is due, "whether or not the landlord complies with this *Act*". On the basis of the undisputed evidence, I find that the Tenants did not pay \$1,050.00 when it was due in March of 2021.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence, I find that on May 01, 2021 the Landlord served the Tenants with

a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that they must vacate the rental unit by May 11, 2021. I find that the Landlord had the right to serve this Notice to End Tenancy, as rent from March of 2021 was still outstanding on May 01, 2021.

Section 46(4)(a) of the *Act* stipulates that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has no effect if the tenant pays the overdue rent within five days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

On the basis of the testimony of the female Tenant, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was received by the Tenants on May 05, 2021 or May 06, 2021.

Even if I accepted the male Tenants testimony that \$1,000.00 in rent was paid to the Landlord on, or about, May 05, 2021, I would conclude that all of the outstanding rent was not paid within five days of the Tenants receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as \$1,050.00 was due. As all of the outstanding rent was not paid, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was not cancelled pursuant to section 46(4)(a) of the *Act*.

Section 46(4)(b) of the *Act* stipulates that a tenant has five days from the date of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. On the basis of the testimony of the male Tenant, I find that the Tenants did not file an application to dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 46(5) of the *Act* stipulates that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

As the Tenants did not dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and there is insufficient evidence to establish that all of the outstanding rent was paid, I find the Tenants are conclusively presumed to have accepted this tenancy ended, pursuant to section 46(5) of the *Act*. I therefore grant the Landlord's application for an Order of Possession.

When a Landlord applies for a monetary Order for unpaid rent, the burden of proving rent is owed rests with the Landlord. I find that the Landlord has submitted insufficient evidence to show that the Tenants did not pay \$1,000.00 of the outstanding rent from March of 2021. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a rent ledger, that shows this rent was not paid. As the Landlord has submitted insufficient evidence to show this amount was not paid, I dismiss the Landlord's application for a monetary Order for this amount.

As there is no evidence that the Tenants paid the outstanding rent of \$50.00 from March of 2021, I find this amount is still due to the Landlord.

On the basis of the undisputed evidence, I find that the Tenants did not pay rent when it was due in April and May of 2021. I therefore find that they owe rent of \$4,400.00 for those two months.

As the Tenants did not vacate the rental unit on the declared effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which was May 11, 2021, I find that they are obligated to pay rent, on a per diem basis, for the days they remained in possession of the rental unit.

On the basis of the undisputed evidence that they occupied the rental unit in June, July, and August of 2021, without paying rent, I find that they owe rent of \$6,600.00 for those three months.

On the basis of the undisputed evidence I find that the Tenants occupied the rental unit from September 01, 2021 to September 22, 2021, without paying rent. As rent is due, according to the tenancy agreement, on September 04, 2021, I find that they owe per diem rent of \$311.94 for the period between September 04, 2021 and September 22, 2021.

The Tenants submitted no evidence to establish they had a legal right to withhold rent. The Tenants retain the right to file an Application for Dispute Resolution if they believe they are entitled to compensation as a result of deficiencies with the rental unit, but they did not have the right to withhold rent on the basis of those deficiencies.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the filing fee of \$100.00.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenants. In the event the Landlord is not satisfied that the rental unit has been vacated, the Landlord may serve this Order on the Tenants, file it with the Supreme Court of British Columbia, and enforce it as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$11,461.94, which includes \$11,361.94 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$11,461.94. In the event 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 23, 2021

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Residential Tenancy Branch