



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the tenants: DRI, CNR, OLC  
For the landlord: OPR-DR, MNR-DR, FFL

### **Introduction**

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

- an order to dispute a rental increase, pursuant to section 43;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

The landlord's 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; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Landlord MZ was assisted by agent HZ (the landlord). Witness for the landlord SZ also attended. Tenant BA represented tenant RP. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The teleconference hearing started at 1:30 P.M., the tenant left the hearing at 1:47 P.M. and did not return. I left the teleconference connection open until 2:12 P.M.

At the outset of the hearing the attending parties affirmed they understand 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 – Correction of Names

At the outset of the hearing the landlord corrected the spelling of landlord MZ's name and tenant RP's name. The landlord affirmed RP introduced herself and signed the tenancy agreement as RA, but the landlord later obtained a copy of her identity card and learned that her legal name is RP.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

### Preliminary Issue – Service of the Tenants' application

The landlord confirmed receipt of the tenant's notice of hearing in June 2021. Based on the landlord's testimony I find the tenants served the notice of hearing in accordance with section 89(1) of the Act.

The tenant did not provide testimony and left the hearing when I was inquiring about service of the applications.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In the present matter, the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified on the Notice. The tenants bear the onus to prove their case for the claims to dispute a rental increase and for an order for the landlord to comply with the Act.

Rule of Procedure 7.3 provides that if a party does not attend the hearing, the arbitrator may dismiss the application.

Accordingly, in the absence of any attendance at this hearing by the tenants when I was inquiring about the merit of the application, I order the tenants' application for an order to dispute a rental increase and for the landlord to comply with the Act dismissed without leave to reapply.

### Preliminary Issue – Service of the Landlord’s application

The landlord affirmed she served the notice of hearing and evidence (the materials) by registered mail on July 07, 2021 sent to the rental unit’s address. The tracking numbers for both packages are recorded on the cover page of this decision. The tenant stated he did not receive the materials.

Based on the landlord’s convincing testimony and the proof of registered mail, I find the landlord served the materials 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 landlord’s materials on July 12, 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 respondents.

### Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend her application for \$3,300.00 in unpaid rent to include an additional \$4,400.00 for the unpaid rent of June, July, August and September 2021.

The increase in the landlord’s monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord’s monetary claim for unpaid rent to \$7,770.00.

### Issues to be Decided

1. Are the tenants entitled to the cancellation of the Notice?
2. Is the landlord entitled to an order of possession based on the Notice?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to an authorization to recover the filing?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord’s 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 testified the tenancy started on June 01, 2020. Monthly rent is \$1,000.00, due on the first day of the month. The landlord asked the tenants to provide a \$200.00 security deposit, but the tenants did not do so. The tenancy agreement was submitted into evidence. It indicates the tenants are BA and RP, monthly rent is \$1,000.00 and that the tenants did not provide the \$200.00 security deposit.

The landlord said the tenants agreed to pay an extra \$100.00 of rent in January and February 2021 because their son was living in the rental unit. The landlord believes the tenants' son left the rental unit in February 2021. The tenants paid rent in the amount of \$1,000.00 per month until December 2020 and \$1,100.00 per month in January and February 2021.

The landlord served the Notice by attaching it to the rental unit's door on May 02, 2021. A copy of the May 02, 2021 Notice was submitted. It indicates: "\$3,300.00 in unpaid rent for March/April/May due on May 01, 2021". The effective date is May 15, 2021. The landlord submitted a witnessed proof of service (RTB form 34) indicating the Notice was attached to the tenant's door on May 02, 2021.

The landlord affirmed the tenants continue to occupy the rental unit and have not paid rent.

The landlord is claiming for an order of possession and a monetary order for the unpaid rent of March, April, May, June, July, August and September 2021 in the total amount of \$7,700.00.

The landlord submitted into evidence a direct request worksheet (RTB form 46) on May 17, 2021 indicating the tenant did not pay rent in March, April and May 2021 in the amount of \$1,100.00 per month.

### Analysis

Section 90 (c) of the Act provides that a document served in accordance with section 88 of the Act is deemed to be received if served by attaching to the rental unit's door, on the third day after the document is attached.

Based on the landlord's convincing testimony and the proof of service (RTB form 34), the tenants are deemed served the Notice on May 05, 2021, in accordance with sections 88(g) and 90(c) 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 and the tenancy agreement that the tenants must pay monthly rent of \$1,000.00 on the first day of the month and that the tenants did not pay rent in March, April, May, June, July, August and September 2021. Based on the landlord's convincing undisputed testimony and the direct request worksheet (RTB form 46), I find the tenants are in arrears for March, April, May, June, July, August and September 2021 rent in the amount of \$7,000.00.

Section 52 of the Act provides that, in order to be effective, a notice to end tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

I find the Notice does not indicate the correct amount of unpaid rent, as monthly rent is \$1,000.00 and the landlord indicated the Notice is for unpaid rent in the amount of \$3,300.00 for March, April and May 2021. Thus, the Notice does not comply with section 52(d) of the Act.

Section 68(1) of the Act allows the arbitrator to amend the Notice:

- If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
  - (b) in the circumstances, it is reasonable to amend the notice.

Based on the landlord's convincing testimony, the Notice and the tenancy agreement, I am satisfied the tenants were aware the Notice was issued for rent due on March, April and May 01, 2021 in the amount of \$3,000.00 (\$1,000.00 per month). I find it is reasonable to amend the Notice to correct the amount of monthly rent to \$1,000.00 and the total amount of unpaid rent due on May 01, 2021 to \$3,000.00. The tenants did not pay any amount of rent since March 2021.

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

As the tenants have not paid rent and the effective date of the Notice is May 15, 2021, I dismiss the tenant's application for an order to cancel the Notice and grant the landlord an order of possession, per section 55(1)(b) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

In summary:

March to September 2021 rent (\$1,000.00 x 7)	\$7,000.00
Filing fee	\$100.00
<b>Total</b>	<b>\$7,100.00</b>

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

### Conclusion

Pursuant to section 55(1)(b) of the Act, I grant an order of possession to the landlord 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 and 72 of the Act, I grant the landlord a monetary order in the amount of \$7,100.00.

The landlord is 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 17, 2021