



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55; and
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:05 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. 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. 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."

I accept the landlord's testimony that the tenants were served with the notice of dispute resolution and evidence (the materials) by registered mail on July 24, 2021 and the interim decision and notice of hearing on August 14, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

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 July 29, 2021 and the interim decision and notice of hearing on August 19, 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 – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$2,490.00 in unpaid rent to include an additional \$4,980.00 for the unpaid rent of 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 \$7,470.00.

#### Preliminary Issue – Res Judicata

The landlord is claiming for unpaid rent due on March, April, May and June 01, 2021 and utilities in the total amount of \$10,462.82.

The landlord affirmed a prior decision of the Residential Tenancy Branch issued on June 05, 2021 (the prior decision) awarded him a monetary order for that claim.

Thus, the landlord's application for unpaid rent due on March, April, May and June 01, 2021 and utilities in the total amount of \$10,462.82 is *res judicata* – a matter already decided upon – and I decline to hear it.

#### Issues to be Decided

Is the landlord entitled to:

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

#### 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 affirmed the tenancy started on October 15, 2020. Monthly rent is \$2,490.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,245.00 and a pet damage deposit of \$1,245.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence. It indicates monthly rent is \$2,490.00.

The landlord served the Notice by registered mail on April 09, 2021 (the tracking numbers are recorded on the cover page of this decision). A copy of the April 09, 2021 Notice was submitted. It indicates: "\$4,980.00 in unpaid rent for the months of March and April due on April 01, 2021". The effective date is April 24, 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 July, August and September 2021 in the amount of \$7,470.00.

The landlord served a prior ten-day notice to end tenancy for unpaid rent on March 14, 2021 (the prior Notice). The landlord submitted a copy of the prior decision:

Pursuant to section 52 of the Act, the 10 Day Notice had to be completed correctly. The 10 Day Notice was not completed correctly as it does not include the rental unit address in the relevant section. I do not find it sufficient that the rental unit address is listed under the Tenants' contact address. I find sections 52(b) and (e) of the Act mean that the RTB-30 form needs to be completed correctly and the 10 Day Notice has not been completed correctly. Therefore, the 10 Day Notice is not an effective notice and I decline to issue an Order of Possession based on it. This request is dismissed without leave to re-apply.

[...]

In any event, whether the Tenants have tried to pay rent by a method other than cheque or not, the Tenants owe the Landlord \$9,960.00 in unpaid rent for March to June. I find the Landlord is entitled to recover this unpaid rent.

A Direct Request Worksheet (RTB form 46) was provided. It indicates the landlord is claiming for \$7,470.00 for unpaid rent of July, August and September 2021 and \$10,462.82 for the prior decision monetary order.

### Analysis

Based on the landlord's testimony and the evidence of registered mail, the tenants are deemed served the Notice on April 14, 2021 five days after it was mailed, in accordance with sections 88(c) and 90(a) 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 \$2,490.00 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 undisputed testimony, I find the tenants are in arrears for July, August and September 2021 in the amount of \$7,470.00.

The prior decision cancelled the prior Notice because it did not comply with section 52 of the Act and awarded the landlord a monetary order for rent from March to June 2021.

As such, I award the landlord \$7,470.00.

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, April 24, 2021.

As the landlord was successful in this application, I find that the landlord is 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 landlord to retain the \$2,490.00 security and pet damage deposit.

In summary:

July, August and September 2021 rent (\$2,490.00 x 3)	\$7,470.00
Filing fee	\$100.00
Sub-total	\$7,570.00
Security and pet damage deposits	-\$2,490.00
<b>Monetary award</b>	<b>\$5,080.00</b>

### Conclusion

Pursuant to section 55(2)(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 authorize the landlord to retain the \$2,490.00 security and pet damage deposits and grant the landlord a monetary order in the amount of \$5,080.00.

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 03, 2021

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Residential Tenancy Branch