



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, DRI, FFT, OPR-DR, MNR-DR

### Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order in relation to a disputed rent increase - Section 43; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenants did not attend the hearing to pursue its application. I therefore dismiss the Tenants’ application. I accept the Landlord’s evidence that the Tenants were served with their application for dispute resolution, notice of hearing and evidence in person on June 17, 2021. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

### Background and Evidence

The tenancy under written agreement, with both Tenants' names and signatures on the last page of the agreement, started on September 1, 2019. Rent of \$2,500.00 is payable on the first day of each month. No security deposit was collected by the Landlord. The Tenants owed rental arrears for the period September 2019 to May 2021 inclusive and failed to pay rent on June 1, 2021. On June 10, 2021 the Landlord served the Tenants with a 10-day notice to end tenancy for unpaid rent (the "Notice"). Although the Notice sets out unpaid rent of \$40,800.00 due June 21, 2021, this amount was an error, and the Tenants knew and agreed that the Notice should set out a total amount of \$35,000.00 for unpaid rent due June 21, 2021. This rental amount includes rents unpaid for the period March 18, 2020 to August 17, 2020 (the "Affected Rent"). The Landlord did not give the Tenants a repayment plan for the Affected Rent prior to issuing the Notice. The Tenants have not moved out of the unit but have informed the Landlord that they will move out by the end of October 2021.

The Landlord claims unpaid rent of \$35,000.00 for the period September 2019 to June 2021 inclusive.

### Analysis

Section 3(1) of the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (NO. 2) Regulation made August 14, 2020 (the "Regulation") provides that as an exception to, inter alia, section 46 of the Act a landlord must not give a tenant notice to end a tenancy under section 46 (1) of the Residential Tenancy Act in respect of Affected Rent that is unpaid and instead this Division applies. Affected Rent is rent payable for the period March 18, 2020 to August 17, 2020. This section of the Regulation was repealed effective July 10, 2021. Section 68(2)(b) of the Act provides that the director may, in accordance with this Act, set aside or amend a notice given under this Act that does not comply with the Act. Although the Notice includes an amount of rent that may be subject to restrictions as Affected Rent, as the Notice also includes unpaid rents accumulated after the Affected Rent period that are not subject to

restrictions, given the undisputed evidence that the Tenant knew and agreed to how much rent was unpaid and as there is no evidence that that the Tenant had any right not to pay the unpaid rents that are not subject to any restrictions, I find that the Notice may be amended to set out only those unpaid rents that are not Affected Rent.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act in relation to form and content provides that in order to be effective, a notice to end a 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, and
- (e) when given by a landlord, be in the approved form.

As the Tenants' application has been dismissed and as the Notice complies in form and content, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the Landlord's undisputed evidence of unpaid rent to and including June 2021, I find that the Landlord is entitled to \$35,000.00

as claimed. The Landlord has leave to reapply for any rents past this date that have not been paid.

Conclusion

The Tenants' application is dismissed.

**I grant** an Order of Possession to the Landlord effective 2 days after service of the Order on the Tenants. The Tenants must be served with this **Order of Possession**. Should the Tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for **\$35,000.00**. If necessary, this order may be filed in the 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 Act.

Dated: October 20, 2021

---

Residential Tenancy Branch