



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Tenants: CNR, CNL, FFT  
Landlords: OPR-DR-PP, MNR-DR, FFL, MNRL, MNDCL

### **Introduction**

This hearing was convened in response to cross applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords’ 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their applications are dismissed without leave to reapply.

The landlords were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlords confirmed that they understood.

The landlords gave sworn testimony that on July 23, 2021, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. The landlords also filed an amendment, which the landlords served the tenants on October 4, 2021 by way of registered mail. The landlords included the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with the packages, 5 days after mailing. The landlords confirmed receipt of the tenants' applications.

The landlords provided undisputed testimony that the tenants were served with the 10 Day Notice dated July 2, 2021 by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notice on July 7, 2021, 5 days after mailing.

**Issue(s) to be Decided**

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to recover the filing fee for this application?

**Background and Evidence**

The landlords testified to the following facts. This month-to-month tenancy began on November 1, 2019, with monthly rent currently set at \$3000.00, payable on the first of

the month. The landlords collected a security deposit in the amount of \$1,500.00, which the landlords still hold.

The landlords served the tenants with a 10 Day Notice for failing to pay the outstanding rent by July 1, 2021. The landlords provided an updated monetary order worksheet in their amendment package as reflected below of the money owed by the tenants. The landlords are seeking an Order of Possession, as well as a monetary order for the money owed below:

<b>Item</b>	<b>Amount</b>
Money owed per repayment plan for July 2021	\$187.36
Unpaid Rent for July 2021	3,000.00
Unpaid Rent for August 2021	3,000.00
Unpaid Rent for September 2021	3,000.00
Unpaid Rent for October 2021	3,000.00
Utilities for March 18, 2020-August 19, 2021	433.43
<b>Total Monetary Order Requested</b>	<b>\$12,620.79</b>

The landlords submitted a copy of the outstanding utilities bill for their application. The landlords testified that the tenants have not paid any rent since the 10 Day Notice was served.

### **Analysis**

Section 55(1) of the *Act* reads as follows:

**55** (1) 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.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' applications for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, July 17, 2021. As the tenants failed to move out by that date, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the *Act*, in part, states as follows:

### **Rules about payment and non-payment of rent**

**26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlords provided undisputed evidence in the hearing that the tenants failed to pay the outstanding rent in the amount of \$12,187.65, and \$433.43 in outstanding utilities. Therefore, I find that the landlords are entitled to a monetary order for these amounts.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenants.

The landlords continue to hold the tenants' security deposit of \$1,500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I dismiss the tenants' applications without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$11,220.79 Monetary Order in favour of the landlords under the following terms:

<b>Item</b>	<b>Amount</b>
Money owed per repayment plan for July 2021	\$187.36
Unpaid Rent for July 2021	3,000.00
Unpaid Rent for August 2021	3,000.00
Unpaid Rent for September 2021	3,000.00
Unpaid Rent for October 2021	3,000.00
Utilities for March 18, 2020-August 19, 2021	433.43
Filing Fee	100.00
Less Security Deposit Held	-1,500.00
<b>Total Monetary Order</b>	<b>\$11,220.79</b>

The tenants must be served with this Order as soon as possible. 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: October 26, 2021

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Residential Tenancy Branch