



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: CNR, RR  
Landlord: OPR-DR, MNRL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the “Act”), I was designated to hear two crossed applications regarding a tenancy.

The Tenants applied for:

- an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, pursuant to section 46; and
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided, pursuant to section 65.

The Landlord applied for:

- an order of possession for the rental unit, pursuant to section 55; and
- a monetary order for unpaid rent, based on the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 67.

On August 9, 2021 and September 28, 2021, the Landlord submitted two amendments to their application to the Residential Tenancy Branch, to include two additional months of unpaid rent: August and September. As the Tenants are aware they must pay rent each month, I allow the Landlord to amend their original application to include the unpaid rent for August, September, and October, pursuant to section 64 of the Act.

As the Landlord paid the Residential Tenancy Branch a \$100.00 filing fee, pursuant to section 59 of the Act, I amend the application to include reimbursement of that payment by the Tenants, in accordance with section 64.

The Landlord attended the hearing, but the Tenants did not. The teleconference line remained open for the duration of the approximately 45-minute hearing, and the Notices of Hearing were confirmed to contain the correct hearing information. As the Tenants did not attend the hearing, I dismiss their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, and for an order to reduce rent for repairs, services, or facilities agreed upon but not provided.

The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Notice of Hearing was made available to the Landlord on August 6, 2021. The Landlord testified they served the Tenants with the Notice of Hearing, evidence, and an amendment dated August 9, 2021, that same day by registered mail. Based on the Landlord's undisputed testimony, I find the dispute resolution proceeding package served on the Tenants in accordance with section 89 of the Act, and therefore deemed received on August 14, 2021, pursuant to section 90 of the Act. As the Tenants had submitted an application that was crossed with the Landlord's, the Tenants would also have been provided with the details of the hearing by the Residential Tenancy Branch.

The hearing proceeded on the Landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice").

#### Issue(s) to be Decided

Is the Landlord entitled to an order of possession and a monetary order due to non-payment of rent?

#### Background and Evidence

The Landlord testified that this periodic tenancy began on September 28, 2015. Rent is now \$1271.00 and is due by the first day of each month. The Tenants paid a security deposit of \$575.00, which the Landlord still holds.

The Landlord referred to a copy of the 10 Day Notice, signed July 13, 2021, and submitted as evidence. The Landlord testified that the Tenants were served with the 10

Day Notice on July 13, 2021, in person, by the Landlord giving it to the adult son of one of the Tenants.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute it. The Tenants received the 10 Day Notice on July 13, 2021 and applied to dispute it on July 19, 2021.

The Landlord testified that the Tenants did not pay the rent owing within five days of receiving the 10 Day Notice. The Landlord's August 9, 2021 and September 28, 2021 application amendments were for the August and September rent of \$1271.00 per month, which the Landlord testified was not paid.

The Landlord testified that the Tenants still occupy the rental unit.

The Landlord testified the Tenants paid the rent for July in full on July 22, 2021, but that as of the hearing, they have not paid rent in full for August, September, or October, as summarized:

<b>Month</b>	<b>Rent Paid</b>	<b>Rent Owing</b>
August 2021	\$0	\$1271.00
September 2021	\$0	\$1271.00
October 2021	\$635.00	\$636.00
	<b>Total</b>	<b>\$3178.00</b>

The Landlord is seeking a monetary order in the amount of \$3178.00.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the Tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that the 10 Day Notice meets the form and content requirements of section 52 of the Act as it is signed and dated by the Landlord, gives the address of the rental unit,

states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I find that the tenancy agreement requires the Tenants to pay the Landlord rent of \$1271.00 each month. I find that the Landlord served the Tenants the 10 Day Notice in person on July 13, 2021, and in accordance with section 88 of the Act. I accept the Landlord's undisputed affirmed testimony that the Tenants did not pay the rent owing under the tenancy agreement and cited within the 10 Day Notice within five days of receiving the 10 Day Notice.

The Tenants did not appear at the hearing, and there is no evidence before me that the Tenants had a legal right to withhold payment of rent.

I find that the Landlord is entitled to an order of possession.

I find that the Tenants have failed to pay the rent owing under the tenancy agreement and owe the Landlord \$3178.00 for unpaid August, September, and October rent.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in their application, I order the Tenants to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I find the Tenants owe the Landlord an amount of \$3278.00. This amount is the total of \$3178.00 for unpaid rent and \$100.00 for the filing fee.

### Conclusion

The Tenant's application is dismissed.

The Landlord's application is hereby granted.

I hereby grant the Landlord an Order of Possession, which must be served on the Tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the Landlord a monetary award of \$3278.00. In accordance with sections 38 and 72 of the Act, I allow the Landlord to retain \$575.00 of the Tenants' security deposit in satisfaction of this monetary award.

The security deposit for this tenancy is reduced by \$575.00 to \$0.

I hereby grant the Landlord a monetary order for \$2,703.00, the remaining amount owed by the Tenants to the Landlord.

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 15, 2021

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Residential Tenancy Branch