



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIONS COURT MANAGEMENT  
CORP. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPR, MNRL-S, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On September 7, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On December 16, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant C.C. attended the hearing, and K.C. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties confirmed service of the Notice of Hearing and evidence packages. As well, all parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for

Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2021, that the rent was currently established at an amount of \$2,2250.00 per month, and that it was due on the first day of each month. A security deposit of \$1,125.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

K.C. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on September 3, 2021 by hand. He testified that \$2,250.00 was owing for rent on September 1, 2021 and that the Tenants did not pay this rent. Thus, the Notice was served. He submitted that the Tenants have not paid any rent for October, November, and December 2021 or for January 2022. Therefore, in addition to an Order of Possession, the Landlord is also seeking a Monetary Order in the amount of **\$11,250.00** for rental arrears. The effective end date of the tenancy was noted on the Notice as September 13, 2021.

As well, K.C. stated that as per the tenancy agreement, the Tenants are responsible for a \$25.00 late fee per month for late payments of rent, and the Landlord is also seeking a monetary award for these amounts. He referenced the documentary evidence submitted to support the Landlord's position of the Tenants' non-payments of rent. He also confirmed that the Tenants did not have any authority to withhold the rent.

The Tenant confirmed that they did not pay the rent for September 2021 onwards and that they did not have any authority under the *Act* to withhold the rent. She did advise of a number of personal issues at work that attributed to their inability to pay the rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenants were served the Notice on September 3, 2021. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was served on September 3, 2021, the Tenants must have paid the rent in full or disputed the Notice by September 8, 2021 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full by September 8, 2021 to cancel the Notice. While the Tenants disputed this Notice, they did not have any authority to withhold the rent. As there is no evidence before me that the Tenants had a valid reason under the *Act* for withholding the rent, I am satisfied that they breached the *Act* and jeopardized their tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rental arrears for September, October, November, and December 2021, and January 2022. As well, I am satisfied that the Landlord is also entitled to a monetary award for the late payment of rent fees. As such, I grant the Landlord a monetary award in the amount of **\$11,375.00**.

As the Landlord was successful in their Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears for September 2021	\$2,250.00
Late fee for September 2021 rent	\$25.00
Rental arrears for October 2021	\$2,250.00
Late fee for October 2021 rent	\$25.00
Rental arrears for November 2021	\$2,250.00
Late fee for November 2021 rent	\$25.00
Rental arrears for December 2021	\$2,250.00
Late fee for December 2021 rent	\$25.00
Rental arrears for January 2022	\$2,250.00
Late fee for January 2022 rent	\$25.00
Filing Fee	\$100.00
Security deposit	-\$1,125.00
<b>Total Monetary Award</b>	<b>\$10,350.00</b>

#### Conclusion

The Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$10,350.00** in the above terms, and 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: January 18, 2022

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Residential Tenancy Branch