



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR  
                              OPU-DR, MNU-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Tenant's Application) filed by the Tenant on November 5, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice).

This hearing also dealt with a cross-application filed by the former Landlords (the Landlords' Application), who are now also agents for the current Landlord, on November 14, 2021, under the *Residential Act*, seeking:

- An Order of Possession based on the 10 Day Notice;
- A Monetary Order for unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on December 14, 2021, and was attended by the former Landlords D.S. and J.S. Neither the Tenant nor an agent acting on their behalf attended. The new owner, referred to as the current Landlord in this decision, also attended briefly to provide affirmed testimony that D.S. and J.S. are authorized to act on their behalf in terms of procuring an Order of Possession in their name for the rental unit. All testimony provided was affirmed.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to

hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application for Dispute Resolution, the Notice of Hearing, and the documentary evidence intended to be relied upon by the applicant at the hearing. The former Landlords stated that neither they nor the current Landlord, who was not named in the Tenant's Application as the property was not sold and transferred until well after the 10 Day Notice was served and the Tenant's Application was filed, received any documentation from the Tenant in relation to the Tenant's Application. As the Tenant did not attend the hearing to provide any evidence or testimony regarding service of their Application and the Notice of Dispute Resolution Proceeding Package, I accept the former Landlords' affirmed and undisputed testimony and find that it was not served in accordance with either section 59(3) of the *Act* or rule 3.1 of the Rules of Procedure. I therefore dismiss the Tenant's Application with leave to reapply. This is not an extension of any statutory time limit.

As the Tenants did not attend the hearing, I confirmed service of the Landlords' Application and documentary evidence as outlined below. The former Landlords testified that the documentary evidence before me on behalf of themselves and the current Landlord, as well as the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, were sent to the Tenant at the rental unit by registered mail on November 18, 2021. The former Landlords provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. Canada Post shows that the registered mail was sent as set out above, that a notice card was left on November 19, 2021, and that the registered mail has not yet been picked up. The former Landlords stated that as the Tenant is still in the rental unit, there is no reason they should not have received the notice card and picked up the registered mail. Pursuant to section 90(a) of the *Act*, I deem the Tenant served with the above noted documents on November 24, 2021, five days after they were sent by registered mail. As Residential Tenancy Branch (Branch) records indicate that the Notice of Dispute Resolution Proceeding Package was made available to the former Landlords on November 16, 2021, and the registered mail was sent on November 18, 2021, I am therefore satisfied that they complied with section 59(3) of the *Act*, and rule 3.1 of the Rules of Procedure.

I verified that the hearing details shown in the Notice of Hearing for both the Tenant's Application and the Landlords' Application were correct, and I note that the former Landlords had no difficulty attending the hearing on time, using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the former Landlords and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on December 14, 2021. Rule 7.3 of the Rules of Procedure states that 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 reapply. Based on the above, I commenced the hearing of the Landlords' Application as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

The former Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. At their request, a copy of the decision and any orders issued in their favor, or in favor of the current Landlord whom they are authorized to represent, will be emailed to them at the email address listed for them in the Landlords' Application.

Although I have reviewed all evidence and testimony before me accepted for consideration in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Preliminary matters

#### Preliminary Matter #1

During the hearing the former Landlords stated that after the issuance of the 10 Day Notice and the filing of the Applications, the property was sold by them to the current Landlord P.M. The current Landlord P.M. briefly attended the hearing and provided affirmed testimony that they are the new owner of the property and that they authorize the former Landlords to act on their behalf with regards to obtaining possession of the rental unit for them. I permitted the former Landlords and the current Landlord to submit proof of ownership to me, and documentation from the Land Title Office showing a transfer of ownership from the former Landlord D.S. to the current Landlord P.M. dated December 2, 2021, was submitted for my review and consideration.

Preliminary Matter #2

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. At the hearing the former Landlord sought to amend the Landlords' Application to include additional utilities and rent now owed. I amended the Application accordingly, pursuant to rule 4.2 of the *Act*.

Issue(s) to be Decided

Is the current Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Are the former Landlords entitled to unpaid rent and utilities?

Are the former Landlords entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on May 3, 2021, and was set to end on April 30, 2022. It states that rent in the amount of \$1,750.00 is due on the first day of each month, that an \$875.00 security deposit is required, and that utilities are to be paid based on a percentage split. At the hearing the former Landlords stated that the Tenant was to split the cost of electricity and the municipal utility bill 50/50 with the upstairs tenants and that the bill is in the name of the former Landlords. The former Landlords stated that the Tenant was invoiced and provided a copy of the relevant bills, and permitted 30 days to pay.

The former Landlords stated that when the Tenant did not pay rent as required on November 1, 2021, the 10 Day Notice was served. The 10 Day Notice in the documentary evidence before me is on the current version of the form (the RTB-30), gives the address for the rental unit, is signed and dated November 3, 2021, has an effective date of November 16, 2021, and states that the Tenant failed to pay \$1,750.00 in rent due on November 1, 2021, and \$393.85 in utilities due on October 31, 2021. The 10 Day Notice also states that it was served by attaching a copy to the door or other conspicuous place. The former Landlords submitted a Proof of Service Notice to End

Tenancy and Written Demand to Pay Utilities form (the RTB-34) which states that C.J. witnesses R.O., who is an agent for the former Landlords, post the 10 Day Notice to the door of the rental unit, or other conspicuous place, on November 3, 2021. Further to this, I note that the Tenant stated in their Application that the 10 Day Notice was posted to their door on November 3, 2021, two days prior to the date they filed their Application seeking to dispute it.

The former Landlords stated that since the 10 Day Notice was served, the Tenant has continued to reside in the rental unit and has not paid any rent or utilities. The former Landlords stated that the last rent paid was on September 27, 2021, and that the Tenant currently owes rent for November and December of 2021. The former Landlords stated that the amount owed for utilities since the time the 10 Day Notice was served has also increased and that the Tenant currently owes the previously stated \$393.85, plus \$117.88 per month in electrical bills for November and December of 2021, plus an additional \$338.48 in municipal utility bills. Overall, the former Landlords stated that the Tenant currently owes them \$1,085.97 for outstanding utility charges.

Finally, the former Landlords sought a Monetary Order for recovery of the \$100.00 filing fee.

Although the teleconference remained open for the entire duration of the 59 minute hearing, no one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies existed between the parties until at least December 2, 2021, when ownership of the property transferred to the current owner P.M. I am also satisfied that the terms of the tenancy agreement are as summarized in the background and evidence section above.

Although I am satisfied that the Tenant filed their Application seeking cancellation of the 10 Day Notice within the five day period set out under section 46(4) of the *Act*, and therefore conclusive presumption does not apply, the Tenant did not appear at the hearing to present any evidence in support of their Application. As a result, I accept the uncontested documentary evidence and affirmed testimony before me from the former Landlords that the Tenant has not paid rent for November or December of 2021, and currently owes \$1,085.97 in outstanding utilities.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,750.00, on time and in full each month, up to and including the month of December 2021, and that the Tenant failed to do so. As there is no evidence before me that the Tenant had a right under the *Act* to deduct or withhold the rent, I find that they did not. Based on the above and as I am satisfied that the 10 Day Notice was served on the Tenant on November 3, 2021, and that it complies with the form and content requirements set out under section 52 of the *Act*, I therefore find that the former Landlords had grounds under section 46 of the *Act* to end the tenancy, and that the current Landlord is therefore entitled to an Order of Possession pursuant to section 55(1) of the *Act*. Pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #3, I find that the tenancy is ended as of December 14, 2021, the date of the hearing, and I therefore grant the current Landlord an Order of Possession effective two (2) days after service on the Tenant.

Pursuant to sections 7 and 26 of the *Act* and Policy Guideline #3, I therefore grant the former Landlords the following amounts:

- \$1,750.00 in rent for November 2021;
- \$790.32 in outstanding rent due on December 1, 2021, for the period up to and including December 14, 2021, (the end date for the tenancy) calculated at a per diem rate of \$56.45; and
- \$1,085.97 in outstanding utilities.

If the former Landlord or the current Landlord suffered a loss of rent after this date, as a result of the Tenant overholding the rental unit after December 14, 2021, or for another reason, they remain entitled to file an Application for Dispute Resolution with the Branch seeking recovery of those amounts from the Tenant, should they wish to do so.

As the former Landlords were successful in their Application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, I therefore grant the former Landlords a Monetary Order in the amount of \$3,726.29.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the former Landlords D.S. and J.S. a Monetary Order in the amount of **\$3,726.29** and I order the Tenant to pay this amount to the former Landlords. The former Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant

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.

Pursuant to section 55 of the *Act*, I grant the current Landlord P.M. an Order of Possession for the rental unit effective **Two (2) days after service on the Tenant**. The current Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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 12, 2022

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Residential Tenancy Branch