



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the tenants: CNR-MT, RP  
For the landlords: OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66; and
- an order requiring the landlord to carry out repairs, pursuant to section 32.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants PA and JA and landlord BG (the landlord) attended the hearing. The landlord represented landlord GG. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenants' application lists tenants PG and JA and landlords BG and GG. The landlord's application lists landlord BG and tenants PG and JA.

Preliminary Issue – service of the tenants' application

Tenant PS affirmed she served the notice of hearing and the evidence by email on September 25, 2021 and a second set of evidence on January 10, 2022 by text message. The email and the text message were sent to landlord BG but addressed to both landlords. Tenant PS stated that landlord BG provided her with an email address for service.

Landlord BG confirmed receipt of the notice of hearing and testified he did not receive evidence. Landlord BG said he did not provide the tenants with an email address for service. Landlord BG affirmed that landlord GG had access to the notice of hearing and had enough time to review it.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

**(a) by leaving a copy with the person;**

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

**(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;**

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(emphasis added)

Section 71(2)(c) of the Act states:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

[...]

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Based on the testimony offered by both parties, I find the tenants sufficiently served the landlords the notice of hearing, in accordance with section 71(2) of the Act.

Residential Tenancy Branch Policy Guideline 12 (March/2021) states:

### 3. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

- An application for dispute resolution
- except for applications by a landlord for an order of possession or an order ending a tenancy early
- A Residential Tenancy Branch decision to proceed with a review of a Decision

[...]

There are only four methods of service that may be used for these matters. These are:

#### Personal service

- o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.
- o Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant. In cases where there are multiple tenants, the landlord must serve a copy to each co-tenant separately.

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

#### Registered Mail

- o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord. See “Service of documents on an incorporated company or society” in section 6 below or “Serving documents at the address at which the landlord carries on business as a landlord” in section 7 below.
- o Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant. Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. This includes Express post, if the signature option is used. Parties using Registered Mail or Express Post should obtain a copy of the proof of delivery from Canada Post and submit that document as proof of service. This can be obtained from Canada Post’s website. A screen shot or picture of the information is sufficient.

#### Email service

- o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

#### A Residential Tenancy Branch Order Regarding Service

o See “Orders for substituted service” in section 13 below and “Proof of service” in section 14 below.

Text message is not a permitted method of service for the notice of hearing or the evidence.

Residential Tenancy Branch Regulation (the Regulation) 43 states:

For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

The parties offered conflicting testimony about providing an email address for service. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenants did not submit any documentary evidence to support their claim that the landlord provided an email address for service.

Thus, I find the tenants failed to prove, on a balance of probabilities, that the landlords provided an email address for service.

I find the tenants did not serve their evidence in accordance with section 89(1) of the Act. I have excluded the tenants’ evidence documents.

I note that section 55(1) 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 is compliant with the Act.

I note that section 55(1.1) 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 under section 46 of the Act, I must consider if the landlord is entitled to a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Preliminary Issue – service of the landlord’s application

The landlord stated he served the notice of hearing and the evidence (the materials) to tenant PS in person on October 17, 2021.

Tenant PS testified she did not receive the materials and she only learned about the landlord’s application at the hearing.

The parties offered conflicting testimony about service of the landlord’s materials. The landlord did not provide any documentary evidence that he served the materials in person.

Thus, I find the landlord failed to prove, on a balance of probabilities, that he served the materials.

I dismiss the landlord’s application with leave to reapply.

Preliminary Issue – severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notice to end tenancy for unpaid rent, the extension of the timeline for disputing the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants’ other claims to warrant that they be heard together.

The tenants’ other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant’s claims with leave to reapply except the extension of the timeline for disputing the Notice and the cancellation of the notice to end tenancy and which will be decided upon.

Issues to be Decided

Are the tenants entitled to cancellation of the Notice?

If the tenants' application is dismissed, are the landlords entitled to an order of possession and a monetary order?

### Background and Evidence

Both parties agreed the tenancy started on May 15, 2021. Monthly rent is \$2,650.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,325.00 was collected and the landlords hold it in trust.

Both parties agreed the landlord attached the Notice to the tenants' door on September 05, 2021 and the tenants received it on September 06, 2021.

The tenants submitted the application on September 11, 2021 and continue to occupy the rental unit.

Both parties agreed they have a copy of the Notice. It is dated September 05, 2021 for unpaid rent due on September 01, 2021 in the amount of \$2,650.00. The Notice is signed by the landlord, gives the address of the rental unit, states the grounds to end the tenancy and it is in the approved form. The effective date is September 15, 2021.

Tenant JA said he paid \$1,600.00 or \$1,700.00 and tenant PA affirmed she paid \$600.00 by the end of September 2021.

The landlord confirmed receipt of \$2,150.00 and stated there is a balance of \$500.00 for September 2021 rent.

The landlord testified the tenants are in rental arrears in the amount of \$11,100.00 (\$500.00 for the balance of September 2021, \$2,150.00 per month for October, November, December 2021 and January 2022).

Tenant PS said she did not pay rent because the rental unit has a serious pest control issue. Tenant PS did not pay for emergency repairs.

### Analysis

I accepted the uncontested testimony that the tenants received the Notice on September 06, 2021, in accordance with section 88(g) of the Act. I find the tenants disputed the notice within the timeframe of section 46(4) of the Act.

I dismiss the tenants' claim for more time to dispute the Notice, as the Notice was not disputed late.

Based on the testimony offered by both parties, I find the tenants must pay monthly rent in the amount of \$2,650.00 on the first day of the month.

Based on the convincing and detailed testimony offered by the landlord and the tenants' vague testimony, I find the tenants paid the total amount of \$2,150.00 by the end of September 2021 and are in rental arrears of \$500.00 for September 2021 rent.

Section 26(1) of the Act states:

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 tenants cannot withhold rent if the landlord does not comply with the act.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The tenants paid part of the rent due on September 01, 2021 more than five days after they received the Notice.

Pursuant to section 53(2) of the Act, the effective date of the Notice is corrected to September 16, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and is in the approved form.

Based on the above, I find the tenancy ended on September 16, 2021, per section 44(1)(a)(ii) of the Act. I dismiss the tenants' application to cancel the Notice and award the landlords an order of possession, per section 55(1) of the Act.

Residential Tenancy Branch Policy Guideline 3 (issued in August 2021) states:

Section 44 of the Residential Tenancy Act and section 37 of the Manufactured Home Park Tenancy Act set out when a tenancy agreement will end. **A tenant is not liable**

**to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.** In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

[...]

**Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:**

- **the tenant has disputed a notice to end tenancy** issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- **the notice to end tenancy complies with section 52 of the RTA** (section 45 of the MHPTA); and
- **the director, during the dispute resolution proceeding, dismisses the tenant's application** or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

**Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended.** Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

[...]

Under section 46(5) of the RTA (section 39(5) of the MHPTA), a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice if they do not pay the rent or make their application for dispute resolution within 5 days after receiving the notice to end tenancy. If the tenant submits their application late and the director does not extend the time limit under section 66 of the RTA (section 59 of the MHPTA), then the tenancy ended on the effective date of the notice to end tenancy.

**Only rent owing up until the effective date of the notice to end tenancy would constitute unpaid rent for the purpose of section 55 (1.1) of the RTA** (section 48 (1.1) of the MHPTA).

(emphasis added)



Based on the testimony offered by both parties, I find that when the tenancy ended on September 16, 2021 the tenants were in rental arrears in the amount of \$1,413.33 (\$2,650.00 / 30 \* 16 days).

The landlord confirmed receipt of \$2,150.00 by the end of September 2021. Thus, I do not award unpaid rent under section 55(1.1) of the Act.

### Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlords 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.

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 26, 2022

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Residential Tenancy Branch