



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File# 910054490: CNR  
File# 310056742: OPR, MNRL-S, FFL

### Introduction

The Tenants applies to cancel a 10-Day Notice to End Tenancy dated November 6, 2021 (the “10-Day Notice”) pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”).

The Landlord applies for an order for possession pursuant to s. 55 of the *Act* after issuing the 10-Day Notice. The Landlord also seeks an order for unpaid rent and return of his filing fee.

S.K. and P.K. appeared on their own behalf as Landlords. S.M. appeared as agent for the Landlords. The Tenants did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notices of Dispute Resolution. As the Tenants failed to attend, the hearing was conducted without their participation as provided for by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised that the 10-Day Notice was personally served on the Tenants on November 6, 2021. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and was received by the Tenants on November 6, 2021.

The Landlord further advises that the Tenants were personally served with their Notice of Dispute Resolution and the Landlord's evidence on December 9, 2021. I find that the Landlord served the Notice of Dispute Resolution and their evidence in accordance with s. 89 of the *Act* on December 9, 2021.

The Tenant provided no evidence to the Residential Tenancy Branch as part of their application.

#### Issue(s) to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Landlord entitled to a monetary order for unpaid rent?
- 4) Is the Landlord entitled to return of his filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- the Tenants moved into the rental unit on June 1, 2021;
- rent of \$1,800.00 was due on the first day of each month; and
- the Landlord holds a security deposit of \$900.00 in trust for the Tenants.

A written copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord advised having issued the 10-Day Notice on November 6, 2021 after the Tenant had failed to pay rent on November 1, 2021. The Landlord further advised that the Tenant failed to pay rent on December 1, 2021 and January 1, 2022 and seeks compensation for all three months. The Landlord confirmed they received no payments from the Tenants over the relevant period.

The 10-Day Notice also mentions that the Tenants have failed to pay utilities in the amount of \$83.68 on October 19, 2021. The Landlord confirmed utilities have been unpaid. The Landlord failed to provide copies of the utility statements.

The Landlord confirmed that the Tenant continues to reside within the rental unit.

### Analysis

The Tenants apply to cancel the 10-Day Notice. The Landlord applies for an order for possession, an order for unpaid rent, and return of their filing fee.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. When a tenant applies to cancel a 10-Day Notice, the landlord bears the onus of proving that it was issued in compliance with the *Act*.

I have reviewed the 10-Day Notice and I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

On the undisputed evidence of the Landlord, I find that the 10-Day Notice was properly issued and that the Tenants failed to pay rent on November 1, 2021.

Given that I am satisfied that the 10-Day Notice was properly issued and complies with the formal requirements of the *Act*, I hereby dismiss the Tenants' application to cancel the 10-Day Notice. As the Tenants continue to reside within the rental unit, the Landlord is entitled to an order for possession and shall have that order.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 26 of the *Act* sets out that a tenant must pay rent in accordance with the tenancy agreement unless they are authorized by the *Act* to deduct all or a portion of their rent. In the present circumstances, rent was not paid in accordance with the tenancy agreement and the Tenants had no lawful reason for withholding rent from the Landlord. I find that the Tenants breached their obligation to pay rent as set out in the tenancy agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent. The Landlord could not have mitigated their losses as the Tenants continue to reside within the rental unit.

I exercise my discretion under Rule 4.2 of the Rules of Procedure and permit the Landlord to claim unpaid rent for the additional months of December 2021 and January 2022. I am satisfied on the undisputed evidence of the Landlord that the Tenants failed to pay rent as follows:

Month	Rent Due	Rent Paid	Rent Owed
November 2021	\$1,800.00	\$0.00	\$1,800.00
December 2021	\$1,800.00	\$0.00	\$1,800.00
January 2022	\$1,800.00	\$0.00	\$1,800.00
<b>TOTAL ARREARS</b>			<b>\$5,400.00</b>

I find that the Landlord has established that the Tenants failed to pay rent in the amount of \$5,400.00.

The Landlord also makes a claim for unpaid utilities. However, the Landlord provides no utility statements or written demands for utilities as contemplated by s. 46(6) of the *Act*. As the applicant, the Landlord must provide sufficient evidence to quantify their claim. I find that the Landlord has failed to do so under the circumstances with respect to their claim for unpaid utilities. Accordingly, I dismiss this portion of the Landlords monetary claim without leave to reapply.

Given that the Landlord was largely successful in their application, they are entitled to the return of their filing fee. I order under s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee. I further exercise my discretion under s. 72(2) and direct that the Landlord retain the security deposit of \$900.00 in partial satisfaction of the total amount owed by the Tenants.

### Conclusion

I find that the Landlords have established that the 10-Day Notice was properly issued in compliance with the *Act*. Accordingly, I dismiss the Tenants' claim to cancel the 10-Day Notice and grant the Landlord's claim for an order for possession. Pursuant to s. 55 of the *Act*, I grant the Landlord an order for possession. The Tenants shall provide vacant possession of the rental unit within **two (2) days** of being served with the order.

I further find that the Landlord has established a monetary claim for unpaid rent for the months of November 2021, December 2021, and January 2022. The Landlord's claim for unpaid utilities is dismissed without leave to reapply due to a lack of evidence proving their claim for unpaid utilities.

As the Landlords were largely successful in their application, I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord's filing fee. I further exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the Tenants' security deposit in partial satisfaction of the total amount owed.

I make a total monetary award in favour of the Landlord taking the following into account:

Item	Amount
Total Unpaid Rent	\$5,400.00
Landlord's Filing Fee	\$100.00
Less the security deposit to be retained by the Landlord pursuant to s. 72(2)	-\$900.00
<b>TOTAL</b>	<b>\$4,600.00</b>

Pursuant to s. 67 of the *Act*, I order that the Tenants pay **\$4,600.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 24, 2022

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Residential Tenancy Branch