



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HBAC HOLDINGS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she is not recording this dispute resolution hearing.

The agent confirmed her email address for service of this Decision and Orders.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent in the amount of \$1,424.82. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenants has increased to \$5,554.82.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$5,554.82.

Preliminary Issue- Service

The agent testified that the tenant was served with this application for dispute resolution and evidence via registered mail on October 21, 2021. A copy of the registered mail receipts to each tenant were entered into evidence. I find that the tenants were each served with the above documents in accordance with sections 88 and 89 of the *Act*.

The agent testified that an updated copy of the ledger showing unpaid rent was posted on the tenants’ door on February 9, 2022. I accept the agent’s undisputed testimony and find that the tenants were deemed served with the updated ledger on February 12, 2022, three days after it was posted, in accordance with section 88 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on April 15, 2020. Other tenants in the subject rental building have reported that the tenants are in the process of moving out, but the landlord has not been able to confirm this. Monthly rent in the amount of \$1,025.00 was payable from the start of this tenancy to December 1, 2021. The landlord served the tenant with a Notice of Rent Increase which raised the rent to \$1,040.00 effective January 1, 2022. The landlord did not enter into evidence a copy of the Notice of Rent Increase or proof of service documents pertaining to the Notice of Rent Increase. A security deposit of \$512.50 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on October 6, 2021 for failure to pay rent totalling \$1,424.82 that was due on October 1, 2021. The agent entered into evidence a witness proof of service document stating same. The 10 Day Notice states that the tenants must vacate the subject rental property by October 16, 2021.

The agent entered into evidence a ledger that states that the last month rent was paid in full was July of 2021. The ledger shows that payments made through August and September of 2021 were erratic and that the last rent payment made by the tenants to the landlord occurred on September 20, 2021 and that after that payment, the tenants

owed \$399.82 in unpaid rent. The ledger states that on October 1, 2021 the tenants owed \$1,424.82 in unpaid rent.

The landlord testified that no rent has been received for the months of October 2021 to February 2022 for a total owing of \$5,554.82 and that \$30.00 of that total is from the \$15.00 per month rent increase effective for January and February of 2022.

The tenants did not file to dispute the 10 Day Notice.

### Analysis

Based on the agent's testimony and the witnessed proof of service document entered into evidence, I find that the tenants were personally served with the 10 Day Notice on October 6, 2021, in accordance with section 88 of the *Act*.

Based on the undisputed testimony of the agent and the ledger entered into evidence, I find that the tenants failed to pay the rent stated as outstanding on the 10 Day Notice within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by October 16, 2021, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, and the tenancy agreement entered into evidence, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,025.00 on the first day of each month.

I find that the agent has not proved, on a balance of probabilities, that the tenants were properly served with a Notice of Rent Increase effective January 1, 2022 because the

Notice of Rent Increase and associated proof of service documents were not entered into evidence. I therefore find that the landlord is not entitled to collect the alleged rent increase for January and February 2022, but is entitled to recover the original rent for those months in the amount of \$1,025.00 per month.

Based on the testimony of the agent and the ledger entered into evidence, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlord \$5,524.82 in unpaid rent accrued between August 2021 and February 2022.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$512.50.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent August 2021 to February 2022	\$5,524.82
Filing fee	\$100.00
Less security deposit	-\$512.50
<b>TOTAL</b>	<b>\$5,112.32</b>

The landlord is provided with this Order 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: February 28, 2022

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Residential Tenancy Branch