



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR-DR MNR-DR FFL  
For the tenants: CNR OLC

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 23, 2021 (10 Day Notice) for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice and for an order directing the landlord to comply with the Act, regulation or tenancy agreement. The tenants did not pay a filing fee as it was waived.

The landlord and an agent for the landlord, HW (agent) attended the teleconference hearing. The hearing process was explained to the landlord and agent, and they were given an opportunity was given to ask questions about the hearing process. Thereafter the landlord and agent gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

The tenants were provided a Notice of Dispute Resolution Hearing dated September 22, 2021 (Notice of Hearing) after they applied on September 12, 2021. The tenants failed to attend the hearing, which lasted a total of 21 minutes. As the tenants did not attend the hearing, service of the landlord's application on the tenants was considered. The agent testified that the tenants were both served at the rental unit address, each with their own registered mail package (Package) containing the Notice of Hearing, documentary evidence and application. Two registered mail tracking numbers were submitted during the hearing, which have been included on the style of cause for ease

of reference. According to the Canada Post registered mail tracking website, both Packages were signed for and accepted on October 23, 2021. As a result of the above, I find the tenants were sufficiently served as of October 23, 2021.

In addition, the tenants were provided with their own Notice of Hearing dated September 22, 2021, which includes the date and time of the hearing. Based on the above, as the tenants failed to attend the hearing to present the merits of their application, **I dismiss the tenants' application without leave to reapply.**

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters

The landlord and agent were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlord and agent were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord and agent were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither the landlord or their agent had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed the email address for the landlord at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenants provided their email address in their application, the decision will be emailed to the landlord.

The landlord requested to retain the tenants' security deposit towards any amount owing, which the landlord was advised that I would consider.

#### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence and reviewed during the hearing. The fixed-term tenancy began on August 7, 2021 and was scheduled to revert to a month-to-month tenancy after August 14, 2022. Monthly rent of \$1,500.00 is due on the 15<sup>th</sup> day of each month. The tenants paid a security deposit of \$750.00 at the start of the tenancy, which the landlord continues to hold.

A copy of the 10 Day Notice dated September 23, 2021 (10 Day Notice) was submitted in evidence. The agent confirmed that the tenant was served with the 10 Day Notice by posting to the tenant's door on September 23, 2021. The 10 Day Notice indicates that \$2,250.00 in rent was owed as September 15, 2021. The agent testified that the tenants have failed to pay rent as follows:

1. August and September 2021 rent owing = \$2,250.00
2. October 2021 rent owing = \$1,500.00
3. November 2021 rent owing = \$1,500.00
4. December 2021 rent owing = \$1,500.00
5. January 2022 rent owing = \$1,500.00

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**TOTAL RENT OWING = \$8,250.00**

The landlord confirmed that the tenants continue to occupy the rental unit. The landlord seeks an order of possession, a monetary order for unpaid rent, the filing fee and to offset the amount owed with the tenants' security deposit.

### Analysis

Based on the undisputed testimony of the agent and landlord, and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, as the tenants failed to attend the hearing, I find the 10 Day Notice was not disputed by the tenants. Furthermore, I accept the undisputed testimony of the agent and landlord that the tenants were served with the 10 Day Notice and failed to pay rent of \$8,250.00 as claimed. I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act and find that it is valid as a result. Given the above, I grant the landlord **\$8,250.00** in unpaid rent as claimed pursuant to section 67 of the Act.

**Order of Possession** – Pursuant to section 55 of the Act, once I dismissed the tenants' application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. I have also reviewed the 10 Day Notice and find that it complies with section 52 of the Act and find that it is valid as a result. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on October 7, 2021, which was the effective vacancy date listed on the 10 Day Notice.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. Given the above, I find the landlord's total monetary claim established is **\$8,350.00**, which is comprised of \$8,250.00 in unpaid rent plus the filing fee. Pursuant to sections 38 and 67 of the Act, I authorize the landlord to retain the tenants' full security deposit of \$750.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$7,600.00** pursuant to section 67 of the Act.

### Conclusion

The tenants' application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended October 7, 2021.

The landlord's total monetary claim is \$8,350.00, which is comprised of \$8,250.00 in unpaid rent plus the filing fee. The landlord has been authorized to retain the tenants' full security deposit of \$750.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$7,600.00 pursuant to section 67 of the Act.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

The tenants are cautioned that they can be held liable for the costs to enforce both the order of possession and the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 1, 2022

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Residential Tenancy Branch