



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenants:      **CNR**  
Landlords:      **OPR-DR, MNR-DR, FFL**

### Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act.

This hearing also dealt with the Landlords' cross application pursuant to the Act for:

1. An Order of Possession for Unpaid Rent pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, SB and TA, and the Tenants, CC and MC, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords served the first 10 Day Notice by email on November 26, 2021. The Tenants confirmed receipt of the first 10 Day Notice. I find that the first 10 Day Notice was deemed served on the Tenants on November 29, 2021 pursuant to Sections 43(1) and 44 of the Residential Tenancy Regulation.

The Tenants applied for dispute resolution for the first 10 Day Notice on November 30, 2021. The Tenants testified that they personally served the Landlords with the Tenants' Notice of Dispute Resolution Proceeding package for the first 10 Day Notice on December 9, 2021 (the "T-NoDRP package"). The Landlords confirmed receipt of the T-NoDRP package on December 9, 2021. I find that the Landlords were served with the T-NoDRP package for this hearing on December 9, 2021, in accordance with Section 89(1)(a) of the Act.

The Landlords personally served the second 10 Day Notice on December 2, 2021. The Landlords provided proof of service of that document. The Tenants confirmed receipt of the second 10 Day Notice. I find that the second 10 Day Notice was served on the Tenant on December 2, 2021 pursuant to Section 88(a) of the Act.

The Landlords testified that they personally served the Tenants with the Landlords' Notice of Dispute Resolution Proceeding package for the above-noted claims on December 9, 2021 (the "L-NoDRP package"). The Tenants confirmed receipt of the L-NoDRP package on December 9, 2021. I find that the Tenants were served with the documents for this hearing on December 9, 2021, in accordance with Section 89(1)(a) of the Act.

#### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's first 10 Day Notice?
2. Are the Tenants entitled to cancellation of the Landlord's second 10 Day Notice?
3. If the Tenants are not successful, are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?
4. Are the Landlords entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties agreed that this fixed term tenancy began on November 15, 2021 and is to end on November 30, 2022. The Tenants testified that they did not receive the keys for the rental unit until November 27, 2021, and the Tenants understood that because they moved in later that the start date of the tenancy was negotiable. Monthly rent is \$3,000.00 payable on the first day of each month. A security deposit of \$1,500.00, and a pet damage deposit of \$1,500.00 were collected at the start of the tenancy and are still held by the Landlords.

The reason on the first 10 Day Notice why the Landlords need to end this tenancy states that the Tenants have failed to pay rent in the amount of \$400.00 which was due on November 15, 2021.

The Tenants paid the \$1,500.00 pet damage deposit on November 27, 2021. The Landlords asked the Tenants if this could be used to cancel the first 10 Day Notice; however, the Tenants' dog would not be allowed in the rental unit until the pet damage deposit was paid in full. The Tenants had nowhere to keep their dog at that time, so declined the Landlords' suggestion.

The Tenants state that moving into this rental unit has posed a significant financial strain on them, although the Tenants maintained they can afford the rental unit because they will get rental assistance, they need some more time to get their finances caught up. The Landlords state that the Tenants have given them 'constant excuses', and they have not followed through with any of their promises. The Landlords say they need reliable tenants otherwise their credit will be on the line.

The Tenants did pay the outstanding November rent of \$400.00 and the outstanding December rent of \$3,000.00 to the Landlords on December 11, 2021, however, the Landlords still consider it late and want this tenancy to end. The parties agreed that the amounts on the following table show when rent was due, and what partial payments of rent were made as of the hearing date:

<b>RENT</b>	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
November 15, 2021	\$1,500.00		\$1,500.00
November 23, 2021		\$1,100.00	\$400.00
December 1, 2021	\$3,000.00		\$3,400.00
December 11, 2021		\$3,400.00	\$0.00
January 1, 2022	\$3,000.00		\$3,000.00
January 5, 2022		\$750.00	\$2,250.00
January 27, 2022		\$1,500.00	\$750.00
February 1, 2022	\$3,000.00	\$750.00	\$3,000.00
February 4, 2022		\$0.00	\$3,000.00

The Landlords are seeking an Order of Possession and a Monetary Order for \$3,500.00. The Monetary Worksheet the Landlords uploaded into documentary evidence is dated December 9, 2021.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the Tenants' benefit, Section 26(1) of the Act specifies the rules about payment of rent. It 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.

Section 46 of the Act is the relevant section for this matter. It states:

### ***Landlord's notice: non-payment of rent***

- 46** (1) *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.*

- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
  - (a) pay the overdue rent, in which case the notice has no effect, or*
  - (b) dispute the notice by making an application for dispute resolution.*

...

The Landlords first 10 Day Notice was deemed served on November 29, 2021. The Tenants had until December 4, 2021 to pay the overdue rent or apply for dispute resolution. The Tenants applied for dispute resolution for the first 10 Day Notice on November 30, 2021 within the 5 days after receiving the notice. The Tenants did pay the outstanding rent on December 11, 2021, however, the Landlords still consider it late and want this tenancy to end. I find the November rent balance was late and is grounds to end this tenancy. The Tenants' application for dispute resolution to cancel the first 10 Day Notice is dismissed without leave to re-apply.

As the Tenants have failed in their application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*
- (1.1) *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.*

I find that the first 10 Day Notice complies in form and content with Section 52 of the Act. I uphold the Landlords' first 10 Day Notice and grant an Order of Possession to the Landlords which will be effective on February 28, 2022 at 1:00 p.m.

As the Landlords have been successful, I find that this fixed term tenancy ends on February 28, 2022 due to the Landlords' notice, and the Landlords are entitled to recover the application filing fee paid to start this application. Pursuant to Section 72(2)(b) of the Act, the Landlords may deduct money owed from the deposits they hold. In accordance with Section 67 of the Act, I grant the Landlords a Monetary Order in the amount of \$100.00, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$3,000.00
Less security deposit and pet damage deposit:	-\$3,000.00
Plus recover Filing Fee:	\$100.00
TOTAL OWING:	\$100.00

Conclusion

The Landlords' first 10 Day Notice is upheld, and I grant an Order of Possession to the Landlords effective on February 28, 2022 at 1:00 p.m. The Landlords must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlords a Monetary Order in the amount of \$100.00, 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 of British Columbia and enforced as an Order of that Court.

The Tenants' application for dispute resolution is dismissed in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 11, 2022

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Residential Tenancy Branch