



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR-DR, OPRM-DR, FFL

### Introduction

This matter commenced by way of an ex parte Direct Request Proceeding pursuant to section 55(4) of the Residential Tenancy Act (the Act). However, in a written decision dated January 6, 2022, an adjudicator found that the Landlord had not submitted the required evidence to prove service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the Tenants by email in accordance with Policy Guideline #39. As a result, the Direct Request Proceeding was adjourned to a participatory hearing pursuant to section 74 of the Act.

The Landlord applies for:

- an order of possession;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord attended the participatory hearing on February 15, 2022 and provided affirmed testimony. The Tenants did not attend the hearing.

During the hearing, the Landlord confirmed that the Notice of Dispute Resolution Proceeding and supporting evidence was served on the Tenants by registered mail on January 8, 2022. In support, the Landlord submitted copies of Canada Post registered mail receipts confirming the date of purchase and providing the tracking numbers. Pursuant to sections 89 and 90 of the Act, I find the Tenants are deemed to have received these documents on January 13, 2022, five days after they were mailed.

### Preliminary Matters

The Landlord testified that she attended the rental unit on December 1, 2021 and discovered that the Tenants had vacated. The Landlord also testified that the unit has been re-rented effective January 1, 2022. Therefore, as the Landlord received vacant possession of the rental unit, I find it is not necessary for me to consider the Landlord's request for an order of possession.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

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

The tenancy agreement submitted into evidence confirms the tenancy commenced on October 1, 2021. Rent in the amount of \$2,300.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,150.00 which the Landlord holds.

The Landlord testified the Tenants did not pay rent of \$2,300.00 when due on November 1 and December 1, 2021, and that no partial payments have been received. The Landlord testified that rent in the amount of \$4,600.00 is outstanding.

### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26(1) of the Act confirms:

*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.*

I find the Tenants did not pay rent when due on November 1 and December 1, 2021, as indicated by the Landlord. The Tenants did not attend the hearing to dispute the Landlord's evidence and there is no evidence before me to indicate that the Tenants had any right under the Act to deduct rent. On discovering on December 1, 2021 that the Tenants had vacated the rental unit, I find the Landlord acted reasonably and re-rented the unit effective January 1, 2022.

Considering the above, I find the Landlord has established an entitlement to unpaid rent in the amount of \$4,600.00 to December 31, 2021. Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$4,700.00, which is comprised of \$4,600.00 for unpaid rent and \$100.00 in recovery of the filing fee paid to make the Application.

### Conclusion

The Landlord is granted a monetary order in the amount of \$4,700.00. The monetary order must be served on the Tenants. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 15, 2022

---

Residential Tenancy Branch