



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Singla bros Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The Application was original adjudicated through the Direct Request process but was adjourned to be heard as a participatory hearing for reasons outlined in the Interim Decision dated February 28, 2022

The hearing was conducted via teleconference and was attended by two agents for the landlord

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 2, 2022 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on September 30, 2017 for a one year fixed term tenancy beginning on October 1, 2017 that converted to a month to month tenancy on October 1, 2018 for the

monthly rent of \$1,590.00 due on the 1<sup>st</sup> of each month and a security deposit of \$795.00 was paid;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 6, 2022 with an effective vacancy date of January 19, 2022 due to \$4,941.00 in unpaid rent; and
- A copy of an undated letter that advises the tenants they have underpaid rent in the amount of \$2,556.00 since the start of the tenancy. Specifically, the landlord wrote that the tenant had underpaid by \$90.00 per month for the first 13 months of the tenancy for a total of \$1,100.00 and by \$56.00 per month for the remaining 26 months (up to December 2021) for a total of \$1,456.00. The letter gave the tenants until January 31, 2022 to pay the rental arrears; and
- An undated letter stating that the tenancy agreement prohibited pets and pets are not allowed in the building and advising the tenants that they must either remove the pets immediately or pay a pet damage deposit no later than January 8, 2022.

Testimony and documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of January 2022 as well as rental arrears described above and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on January 6, 2022.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submits the tenants did not pay the rent in full and there is no evidence before that the tenant applied to dispute the Notice to End Tenancy within five days.

The landlord seeks a monetary order for unpaid rent in the amount of \$4,941.00 made up of January 2022 rent; \$795.00 for a pet damage deposit; and \$2,556.00 rental arrears.

The landlord testified the letters noted above were sent to the tenants on January 3, 2022, by posting it on their rental unit door. The landlord testified that they had set up several appointments to meet with the tenants to discuss the rental arrears but the tenants never met with the landlord to have the discussions.

The landlord could not explain how the oversight occurred over the course of the tenancy and it was only noticed after she had hired a new agent and she was reviewing tenancy information while prepared for Notice of Rent Increases for the upcoming year.

The landlord also testified that the tenants have made no payment towards rent for the month of January 2022 but that they have paid rent for the months of February and March 2022.

### Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 9, 2022 and the effective date of the notice was January 19, 2022. I accept the undisputed evidence before me that the tenants failed to pay the rent owed in full or submit an Application for Dispute Resolution seeking to cancel the Notice to End Tenancy within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As to the landlord's claim for rent, I find the landlords request for \$795.00 for a pet damage deposit is not rent and I dismiss that portion of their claim, without leave to reapply.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

In regard to the landlord's claim for rental arrears, I find the arrears were accumulated as a result of the landlord's inaction for a period of over 3 years of the tenants underpaying the rent. I accept the landlord's submissions that the rent in the tenancy agreement was identified as \$1,590.00 and that the tenants under paid that rent each month since October 1, 2017.

However, as the landlord failed to pursue this underpayment or tried to end the tenancy for the non-payment of full rent, I find that the landlord cannot now attempt to recover losses that they allowed to occur for an extended period of time, whether or not it was an oversight on their part.

As such, I dismiss the landlord's claim for rental arrears, without leave to reapply.

I am satisfied the landlord has provided sufficient evidence to establish the tenants have failed to pay the rent for the month of January 2022 for a total amount of \$1,590.00 owed.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply

with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,690.00** comprised of \$1,590.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 29, 2022

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Residential Tenancy Branch