



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sincere Real Estate Service Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPU-DR, MNU-DR, FFL**

### **Introduction**

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent and utilities pursuant to Sections 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 property owners, YW and YZ, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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 property owners and I were the only ones who had called into this teleconference. The property owners were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the property owners that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The property owners testified that they were not recording this dispute resolution hearing.

The property owners personally served the 10 Day Notice on October 8, 2021 and provided proof of service of that document. I find that the 10 Day Notice was served on the Tenants on October 8, 2021 pursuant to Section 88(a) of the Act.

The property owners served the Notice of Dispute Resolution Proceeding package on the Tenants via Canada Post registered mail on October 28, 2021 (the “NoDRP package”). The property owners referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package on November 2, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The property owners served their evidence on the Tenants via Canada Post registered mail on January 3, 2022. The property owners referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenants were deemed served with the property owners’ evidence package on January 8, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matters

#### *Party’s Name*

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the property owners’ application, the property owners used their personal names as opposed to the name of the property management company noted in the tenancy agreement. In the hearing, I asked the property owners if I had their agreement to amend the property owners’ party name in the application. The Landlords property owners agreed, and the corrected Landlord name is noted in the style of cause of this decision.

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. On this basis, I accept that the Landlord is properly named as the property management company name and not the Landlords’ personal names. I amended the Landlord's name and it is reflected in this decision.

#### *Outstanding Monetary Amount*

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent and utilities owing have 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. On this basis, I accept the property owners' request to amend their original application outstanding rent amount from \$8,903.05 to \$14,861.00, and the outstanding utilities amount from \$1,639.08 to \$743.99 to reflect the unpaid rent and utilities that became owing by the time this hearing was convened.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent and utilities?
3. Is the Landlord 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 property owners confirmed that this tenancy began as a fixed term tenancy on March 1, 2017. The fixed term ended on February 28, 2018, then the tenancy continued on a month-to-month basis. Monthly rent was \$3,718.00 payable on the first day of each month, and on January 1, 2022, the rent was increased to \$3,773.00 per month. A security deposit of \$1,700.00 and a pet damage deposit of \$1,700.00 were collected at the start of the tenancy and are still held by the property owners.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$8,903.05 in outstanding rent, and \$1,639.08 in outstanding utilities on October 1, 2021. The effective date of the 10 Day Notice was October 18, 2021.

The property owners provided the following evidence for the outstanding rent and utilities amounts owing:

| <b>RENT</b>    | <b>Rent Owing</b> | <b>Date<br/>rent/partial<br/>rent paid</b> | <b>Rent/partial<br/>amount paid</b> | <b>O/S Rent<br/>Total</b> |
|----------------|-------------------|--|-------------------------------------|---------------------------|
| April 2020     | \$3,718.00        | 2020/04/06                                 | \$2,000.00                          | \$1,718.00                |
| May 2020       | \$3,718.00        | 2020/05/03                                 | \$2,000.00                          | \$3,436.00                |
| June 2020      | \$3,718.00        | 2020/06/03                                 | \$2,500.00                          | \$4,654.00                |
| July 2020      | \$3,718.00        | 2020/07/04                                 | \$3,000.00                          | \$5,372.00                |
|                |                   | 2020/07/06                                 | \$650.00                            | \$4,722.00                |
| August 2020    | \$3,718.00        | 2020/08/14                                 | \$3,000.00                          | \$5,440.00                |
| September 2020 | \$3,718.00        | 2020/09/04                                 | \$3,000.00                          | \$6,158.00                |
|                |                   | 2020/09/07                                 | \$650.00                            | \$5,508.00                |
| October 2020   | \$3,718.00        | 2020/10/13                                 | \$3,718.00                          | \$5,508.00                |
| November 2020  | \$3,718.00        | 2020/11/06                                 | \$3,718.00                          | \$5,508.00                |
| December 2020  | \$3,718.00        | 2020/12/10                                 | \$3,000.00                          | \$6,226.00                |
|                |                   | 2020/12/15                                 | \$650.00                            | \$5,576.00                |
| January 2021   | \$3,718.00        | 2021/01/06                                 | \$3,000.00                          | \$6,294.00                |
|                |                   | 2021/01/14                                 | \$650.00                            | \$5,644.00                |
| February 2021  | \$3,718.00        | 2021/02/10                                 | \$3,500.00                          | \$5,862.00                |
|                |                   | 2021/02/15                                 | \$650.00                            | \$5,212.00                |
| March 2021     | \$3,718.00        | 2021/03/09                                 | \$2,900.00                          | \$6,030.00                |
|                |                   | 2021/03/11                                 | \$600.00                            | \$5,430.00                |
| April 2021     | \$3,718.00        | 2021/04/02                                 | \$2,000.00                          | \$7,148.00                |
|                |                   | 2021/04/14                                 | \$1,650.00                          | \$5,498.00                |
| May 2021       | \$3,718.00        | 2021/05/01                                 | \$2,000.00                          | \$7,216.00                |
|                |                   | 2021/05/16                                 | \$1,600.00                          | \$5,616.00                |
| June 2021      | \$3,718.00        | 2021/06/08                                 | \$3,000.00                          | \$6,334.00                |
|                |                   | 2021/06/10                                 | \$650.00                            | \$5,684.00                |
| July 2021      | \$3,718.00        | 2021/07/08                                 | \$3,650.00                          | \$5,752.00                |
| August 2021    | \$3,718.00        | 2021/08/13                                 | \$3,600.00                          | \$5,870.00                |
| September 2021 | \$3,718.00        | 2021/09/13                                 | \$3,500.00                          | \$6,088.00                |
| October 2021   | \$3,718.00        | 2021/10/29                                 | \$2,500.00                          | \$7,306.00                |
| November 2021  | \$3,718.00        | 2021/11/22                                 | \$2,000.00                          | \$9,024.00                |
|                |                   | 2021/11/30                                 | \$2,000.00                          | \$7,024.00                |
| December 2021  | \$3,718.00        | 2021/12/21                                 | \$1,500.00                          | \$9,242.00                |
| January 2022   | \$3,773.00        | 2022/01/07                                 | \$1,500.00                          | \$11,515.00               |
|                |                   | 2022/01/13                                 | \$1,500.00                          | \$10,015.00               |
|                |                   | 2022/01/31                                 | \$700.00                            | \$9,315.00                |
| February 2022  | \$3,773.00        | 2022/02/20                                 | \$2,000.00                          | \$11,088.00               |
| March 2022     | \$3,773.00        |  |                                     | \$14,861.00               |

| UTILITIES          | Utilities<br>Owing | Date<br>utilities/partial<br>utilities paid | Utilities/<br>partial<br>utilities<br>amount paid | O/S Utilities<br>Total |
|--------------------|--------------------|---|---|------------------------|
| June 2, 2020       | \$271.04           |   |   | \$271.04               |
| September 10, 2020 | \$413.18           | 2020/09/10                                  | \$282.00  | \$402.22               |
|                    |                    | 2020/11/06                                  | \$282.00  | \$120.22               |
|                    |                    | 2021/02/15                                  | \$432.00  | -\$311.78              |
| May 7, 2021        | \$220.22           |   |   | -\$91.56               |
| September 12, 2021 | \$440.14           |   |   | \$348.58               |
| December 20, 2021  | \$395.41           |   |   | \$743.99               |

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$14,861.00, and unpaid utilities in the amount of \$743.99.

### 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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

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 outlines how a tenancy can end for unpaid 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].*
- ...
- (5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) *must vacate the rental unit to which the notice relates by that date.*
- (6) *If*
- (a) *a tenancy agreement requires the tenant to pay utility charges to the landlord, and*
- (b) *the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act which states:

- 52 *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) *be signed and dated by the landlord or tenant giving the notice,*
- (b) *give the address of the rental unit,*
- (c) *state the effective date of the notice,*
- (d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- ...
- (e) *when given by a landlord, be in the approved form.*

The property owners submitted a detailed table of when rent and utilities were due, and when partial rent payments and partial utilities payments were made. I find the Tenants have not paid rent and utilities when they are due and are deeply in arrears. The total outstanding rent amount is \$14,861.00 and the total outstanding utilities amount is \$743.99. After receiving the 10 Day Notice, the Tenants did not pay the outstanding rent or utilities amounts and did not apply for dispute resolution. The Tenants did not attend this hearing to give evidence about the outstanding rent and utilities amounts although provided notice of this hearing date. Pursuant to Section 46(5)(a), I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date, which was October 18, 2021. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 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 have upheld the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants. The Landlord is also entitled to a Monetary Order to recover the outstanding rent and utilities amounts pursuant to Section 55(1.1) of the Act. The total outstanding rent and utilities amounts are \$15,604.99. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security and pet damage deposits held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claim, I

grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary award is calculated as follows:

#### Monetary Award

|                              |             |
|------------------------------|-------------|
| TOTAL OUTSTANDING RENT:      | \$14,861.00 |
| TOTAL OUTSTANDING UTILITIES: | \$743.99    |
| Less security deposit:       | -\$1,700.00 |
| Less pet damage deposit:     | -\$1,700.00 |
| Plus application filing fee: | \$100.00    |
| TOTAL OWING:                 | \$12,304.99 |

#### Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$12,304.99. 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.

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: March 25, 2022

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Residential Tenancy Branch