



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **TT: CNR, OLC, LRE, FFT**  
                                 **LL: OPR-DR, MNR-DR, FFL**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application (Tenants’ Application”) for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated December 9, 2021 (“10 Day Notice”);
- an order the Landlord comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62;
- an order suspending or setting conditions on the Landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession pursuant to sections 46 and 55; and
- authorization to recover the filing fee from the Tenants pursuant to section 72.

Neither of the two Tenants (“JC” and “SS”) attended this hearing. I left the teleconference hearing connection open until 1:58 pm in order to enable the Tenants to call into this teleconference hearing scheduled for 1:30 pm. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Tenants’ Notice of Dispute Resolution Proceeding (“Tenants’ NDRP”). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated she was served by the Tenants with the Tenants’ NDRP in early January 2022. I find the Tenants’ served the Landlord with the Tenants’ NDRP in accordance with section 89 of the Act. The Landlord stated the Tenants did not serve any evidence on her for this proceeding.

The Landlord stated she served the Tenants with her Notice of Dispute Resolution Proceeding ("Landlord's NDRP") in-person on December 9, 2021. I find the Landlord served the Tenants with the Landlord's NDRP in accordance with section 89 of the Act.

The Landlord stated she served her evidence on the Tenants by registered mail on January 11, 2022. The Landlord submitted the Canada Post tracking Number to corroborate her testimony on service of her evidence on the Tenants. I find the Landlord served her evidence on the Tenants in accordance with section 88 of the Act.

#### Preliminary Matter – Effect of Non-Attendance by Tenants

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

##### **6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though the Tenants made the Tenants' Application to dispute the 10 Day Notice, the Landlord nevertheless bears the burden of proof it is more likely than not that the 10 Day Notice is valid. The Landlord must meet this burden even if the Tenants do not attend the hearing.

However, the Tenants bear the onus to prove they are entitled to (i) an order that the Landlord comply with the Act, Regulations and/or tenancy agreement; (ii) an order to suspend or set conditions on the Landlord's right to enter the rental unit and; (iii) an order setting conditions on the Landlord's right to enter the rental unit. As they have not attended the hearing, they cannot discharge this onus. As such, I dismiss those claims in the Tenants' Application without leave to reapply.

Rules 7.1, 7.3 and 7.4 of the RoP state:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 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 the party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenants did not attend the hearing within 10 minutes of its commencement, the Tenants' Application is dismissed without leave to reapply. As the Tenants were not present at the hearing, I will not consider any of the evidence submitted by the Tenants in advance of the hearing when adjudicating the Landlord's application to seek an Order of Possession or her monetary claims for rental arrears.

Preliminary Matter – Amendment to Increase Claim for Unpaid Rent

The Landlord testified the 10 Day Notice stated the Tenants owed \$3,200.00 for rental arrears as of December 1, 2021. The Landlord stated the Tenants have not paid any rent for January and February 2022. The Landlord stated the Tenants vacated the rental unit on February 28, 2022. The Landlord requested an amendment her application to increase the monetary claim for unpaid rent to \$7,100.00.

Section 4.2 of the *Residential Tenancy Branch Rules of Procedure* state:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has 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.

The Tenants continued to occupy the rental unit after the effective date of the 10 Day Notice. I find a claim for recovery by the Landlord for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenants. Based on the above, I order that the Landlords' Application be amended to increase the monetary claim for unpaid rent to \$7,100.00 pursuant to Rule 4.2.

#### Issues

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for the rental arrears?
- recovery of the filing fee of her application from the Tenants?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the Landlord, only the details of the respective submissions and/or arguments of the Landlord relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the Landlord's claims and my and my findings are set out below.

The Landlord submitted a copy of the tenancy agreement. The tenancy commenced on October 15, 2021, for a fixed term ending October 15, 2022, and continued thereafter on a month-to-month basis. The Tenants were required to pay rent of \$1,950.00 on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$975.00. The Landlord stated that, pursuant to an earlier arbitration, she was granted an Order of Possession

requiring the Tenants to vacate the rental unit. The Landlord stated the arbitrator presiding over that earlier hearing awarded the Landlord \$100.00 for the filing fee of her application from the Tenants. The Landlord stated that, after deduction of the \$100.00 filing fee for that prior application, she was now holding \$875.00 on behalf of the Tenants. The Landlord stated the Tenants vacated the rental unit on February 28, 2022.

The Landlord stated she served the 10 Day Notice on JC in-person on December 9, 2021. The Landlord submitted a signed Proof of Service on Form RTB-34 to corroborate her testimony on service of the 10 Day Notice on the Tenants. I find the 10 Day Notice was served on the Tenants in accordance with section 88 of the Act. The 10 Day Notice stated the Tenants owed \$3,200.00 as of December 1, 2021 for rental arrears. The Landlord stated the Tenants did not pay any rent after December 1, 2021 and that the total rental arrears for November 2021 through to February 2022 inclusive was \$7,100.00, calculated as follows:

Date	Rent Owed	Paid	Balance
02-Nov-21	\$1,950.00		\$1,950.00
12-Nov-21		\$700.00	\$1070.00
01-Dec-21	\$1,950.00		\$3,200.00
01-Jan-22	\$1,950.00		\$5,150.00
01-Feb-22	\$1,950.00		\$7,100.00
<b>Total</b>	<b>\$7,800.00</b>	<b>\$700.00</b>	<b>\$7,100.00</b>

### Analysis

Sections 46(1) through 46(5) of the Act state:

- 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.
- (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*

[emphasis in italics added]

The Landlord stated she served the 10 Day Notice on JC in-person on December 9, 2021. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or December 14, 2021, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB Branch disclose the Tenants made their application on December 14, 2021. Accordingly, the Tenants made their application within the five-day dispute period.

I accept the Landlord's undisputed testimony in its entirety. I find the Tenants failed to pay \$3,200.00 in rent as of December 1, 2021. I find, as of the date of this hearing, the Tenants are in rental arrears of \$7,100.00 covering the period from November 2021 through to February 2022 inclusive. Section 26(1) of the Act states:

- 26 (1)** 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.

As such, the Tenants were responsible for paying rent when it was due. Based on the above, I find the 10 Day Notice was issued for a valid reasons.

Sections 55(1) and 55(1.1) of the Act state:

- 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 to the landlord an order of possession of the rental unit if
- (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 reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52. Pursuant to section 55(1) of the Act, the Landlord is entitled to an Order of Possession requiring the Tenants vacate the rental unit. As the Tenants have already vacated the rental unit, it is no longer necessary for me to issue an Order of Possession.

Pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$7,100.00, representing the unpaid rental arrears from November 2021 through February 2022 inclusive. The Landlord has already been granted an order to recover \$100.00 for her application by the arbitrator who heard the earlier application leaving a balance of \$875.00 that the Landlord has confirmed she is holding on behalf of the Tenants. Pursuant to section 72(2) of the Act, the Landlord may retain the balance of the security deposit of \$875.00 in partial satisfaction of the Monetary Order made above.

As the Landlord has been successful in her application, pursuant to section 72(1), I order the Tenants pay for the Landlord's filing fee.

### Conclusion

The Tenants' application is dismissed without leave to reapply.

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlord \$6.325.00 representing the following:

Description	Amount
Rental Arrears from November 2021 to February 2022 inclusive	\$7,100.00
Landlord's filing fee for her application	\$100.00
Less Tenant's Security Deposit	-\$875.00
<b>Total</b>	<b>\$6,325.00</b>

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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 28, 2022

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Residential Tenancy Branch