



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**LL: OPR-DR, MNR-DR, FFL, MNDCL**

**TT: OLC, MNDCT, CNR, RR, FFT, RP, LRE**

### Introduction

This hearing dealt with multiple applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The personal landlord named both respondent tenants and filed two applications for:

- an Order of Possession pursuant to section 55;
- a monetary order pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant BH named the corporate landlord and filed multiple applications for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- a monetary order pursuant to section 67
- an order for repairs pursuant to section 33;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- a reduction of rent pursuant to section 65;
- an order restricting the landlord’s right to enter the property pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. Both the personal and corporate landlords were represented by their agent (the “landlord”) who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenants with the notice of hearing, both applications, evidence and materials by emails sent to an address provided by the tenant for service purposes on December 29, 2021, and February 3, 2022. Based on the undisputed evidence of the landlord I find the tenant deemed served with the landlord’s materials on January 1, 2022 and February 6, 2022, three days after email, in accordance with sections 88, 89 and 90 of the Act and Regulation 43 and 44. I find that the tenants have been sufficiently served with all materials in any event pursuant to section 71(2)(c) of the Act.

#### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary award as claimed?
- Is the tenant entitled to any of the relief sought?
- Is either party entitled to recover the filing fee from the other?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence regarding the following facts. This fixed-term began in February 2021. The monthly rent is \$5,000.00 payable by the first of each month. A security deposit of \$2,500.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay rent as required on December 1, 2021 and the landlord issued a 10 Day Notice to End Tenancy dated December 5, 2021 indicating a rental arrear of \$5,000.00. The tenants have failed to pay the full amount of the arrear. The tenants have failed to pay subsequent rent and the total amount of the arrear as of the date of the hearing is \$20,000.00. In addition the landlord has incurred NSF fees of \$200.00 for dishonoured payments by the tenants.

The landlord also makes a claim for the time and cost of filing and pursuing the present applications.

### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently I dismiss all of the tenants' applications without leave to reapply.

Section 55 of the *Act* provides that:

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.

I have dismissed the tenants' application, and I find that the landlord's 10 Day Notice dated December 5, 2021 complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I am satisfied with the evidence that the tenant failed to pay rent as required under the tenancy agreement giving rise to the issuance of the Notice. Accordingly, I find that the landlords are entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenants were obligated to pay the \$5,000.00 monthly rent. I accept the landlord's undisputed evidence that the tenants failed to pay the rent as required and there is a total rental arrear of \$20,000.00 as at the date of the hearing. I further accept that the landlords incurred NSF charges of \$200.00 for the tenant's failure to pay the full rent. Therefore, I issue a monetary award in the landlords' favour for \$20,200.00 pursuant to section 67 of the *Act*.

I find that the time spent drafting and preparing Notices to End Tenancy or filing an application for dispute resolution are simply the expected costs associated with pursuing an application and are not losses recoverable from the tenant. Accordingly, I dismiss this portion of the landlords' applications.

As the landlord was successful in their application they are entitled to recovery of their filing fee. However, I find no compelling reason for the landlords' filing of multiple claims and incurred fees each time instead of simply amending their original application. I do not find the multiple filing fees to be reasonable and consequently issue an award of \$100.00, the cost of filing a single application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$2,500.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

All of the tenant's applications are dismissed in their entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$17,800.00, allowing for the recovery of unpaid rent, NSF charges and the filing fee and to retain the security deposit for this tenancy. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: March 28, 2022

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Residential Tenancy Branch