



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1299787 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

The landlord seeks an order of possession based on an undisputed notice to end tenancy and a monetary order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

Attending the hearing was the landlord's agent. Neither tenant attended the hearing. The agent provided sworn, oral testimony that the landlord served the tenants with the Notice of Dispute Resolution Hearing by registered mail on February 4, 2022. Based on this sworn, undisputed evidence, it is my finding that the tenants were served with the required notice and documents necessary for them to participate in the hearing.

### Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?
3. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on August 15, 2018, and monthly rent, due on the first day of the month, is \$1,700.00. The tenants paid a security deposit of \$850.00, which the landlord currently holds in trust. A copy of the written tenancy agreement was in evidence.

On September 17, 2021, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by leaving it in the mail slot or mailbox. A copy of the Notice, along with a proof of service document, was submitted into evidence. To the landlord's knowledge the tenants never filed an application to dispute the Notice.

As of April 1, 2022, according to the agent's evidence, the tenants owe rent arrears in the amount of \$13,600.00. The tenants have not paid any rent since August 2021 but continue to occupy the rental unit.

### Analysis

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired. I note that the Notice complies with section 52 of the Act (form and content).

In this case, the landlord issued the Notice, the tenants have not disputed the Notice, and the time for making any such application has passed. As such, the landlord's evidence persuades me on a balance of probabilities to find that the landlord is entitled to an order of possession of the rental unit.

A copy of the order of possession is issued in conjunction with this decision, to the landlord. The landlord must serve a copy of the order of possession on the tenants. If the tenants fail to comply with the order of possession the landlord may enforce the order in the Supreme Court of British Columbia.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, the tenants are required to pay \$1,700.00 in rent on the first day of the month. However, the tenants have not complied with this requirement and have accumulated rent arrears in the amount of \$13,600.00. There is no evidence before me to make any finding that the tenants had any right under the Act not to pay the rent.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. And section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement. Therefore, pursuant to sections 26, 7, and 67 of the Act, the tenants are hereby ordered to pay the landlord \$13,600.00.

As the landlord was successful in its application, they are awarded an additional \$100.00 for the cost of the filing fee, pursuant to section 72 of the Act. In total, the landlord is awarded \$13,700.00.

Section 38(4)(b) of the Act permits me to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain the tenants' security deposit of \$850.00 in partial satisfaction of the amount awarded.

The balance of the award is granted by way of a monetary order in the amount of \$12,850.00. A copy of this monetary order is issued in conjunction with this decision, to the landlord. As with the order of possession, the landlord must also serve a copy of the monetary order on the tenants. If the tenants fail to pay the landlord, the balance of the award in the amount of \$12,850.00 then the landlord may enforce the order in the Provincial Court of British Columbia (Small Claims Court).

### Conclusion

For the reasons given above, I hereby **ORDER** that:

1. the tenancy is ended effective immediately,
2. the landlord is granted an order of possession of the rental unit,
3. the landlord is authorized to retain the tenants' security deposit, and
4. the landlord is granted a monetary order.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: April 22, 2022

---

Residential Tenancy Branch