



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Stratton Ventures Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **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 pursuant to Sections 26, 46 and 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 Landlord 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 Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord served the Tenants with the 10 Day Notice on December 3, 2021 by posting the notice on the Tenants' door. The Landlord provided a Proof of Service #RTB-34 for the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenants on December 6, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package to the Tenants via Canada Post registered mail on December 12, 2021 (the “NoDRP package”). The Landlord referred me to the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package on December 17, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matter

#### *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 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. On this basis, I accept the Landlord’s request to amend their original application from \$1,605.00 to \$2,705.00 to reflect the unpaid rent 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?
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 Landlord confirmed that this periodic tenancy began on June 14, 2021. Monthly rent is \$1,100.00 payable on the first day of each month. A security deposit of \$550.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$1,605.00 in outstanding rent on December 1, 2021. The effective date of the 10 Day Notice was December 15, 2021.

The Landlord testified that the Tenants no longer reside in the rental unit. She is not sure of the exact date that the Tenants vacated, but it was somewhere near the end of December 2021. The Landlord is no longer seeking an Order of Possession.

The Landlord is seeking rent for the month of January which corresponds to that which the Tenants would owe if they had provided a 30 day notice.

The Landlord is seeking a Monetary Order for unpaid rent in the amount of \$2,705.00.

### 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.*

...

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 10 Day Notice was deemed served on December 6, 2021. The Tenants did not apply for dispute resolution, so according to Section 46(5)(a), I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was December 15, 2021. I uphold the Landlord's 10 Day Notice.

The Tenants did not attend this hearing to give evidence about the outstanding rent amount although provided notice of this hearing date. I must consider if the Landlord is entitled to a Monetary Order for the unpaid rent. Section 55 of the Act reads as follows:

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

...

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I have upheld the Landlord's 10 Day Notice and the Landlord says they no longer need the Order of Possession as the Tenants have vacated the rental unit. The Tenants did not dispute the 10 Day Notice, and the time for making that application has expired. The Landlord is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. The total outstanding rent amount is \$2,705.00. 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 deposit 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:	\$2,705.00
Less security deposit:	-\$550.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$2,255.00

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to them for any outstanding matters. An Information Officer can be reached at:

5021 Kingsway  
Burnaby, BC  
Phone: 250-387-1602  
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

### Conclusion

I grant a Monetary Order to the Landlord in the amount of \$2,255.00. 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: April 27, 2022

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Residential Tenancy Branch