



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR MNDCT OLC FFT

### Introduction

The tenants made an application for various relief under the *Residential Tenancy Act* (the “Act”) including a dispute of a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) pursuant to section 46(4)(b) of the Act.

A hearing convened at 11:00 AM on April 5, 2022 and only the landlord and her sister attended. The tenants did not attend the hearing, which ended at 11:10 AM. It is noted that the landlord’s last name has been corrected on the style of cause.

### Preliminary Issue: Onus of Proof and Non-Attendance of Applicants

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.

As the tenants failed to attend the hearing to prove their case, the application for relief (with the exception of the dispute of the Notice) is dismissed without leave to reapply.

### Issue

Is the landlord entitled to an order of possession and a monetary order based on the Notice?

### Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below. The landlord confirmed the following facts:

The tenancy began on October 6, 2021 and monthly rent was \$3,900.00. The landlord currently holds in trust the tenants' \$1,950.00 security deposit and \$200.00 pet damage deposit. (\$250.00 was the required amount, but the tenants only paid \$200.00). The tenancy ended when the tenants vacated the property sometime in February 2021.

The landlord issued the Notice on January 3, 2022 for unpaid rent "after numerous attempts at communicating." A copy of the Notice was submitted into evidence by the landlord. The landlord gave evidence that the tenants owe rent arrears (for January and February 2022) in the amount of \$7,800.00.

### 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, except, however, when a tenant disputes a notice to end tenancy.

Section 26 of the Act requires a tenant to pay rent in full and on time. If a tenant does not pay rent in full and on time, then the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent under section 46(1) of the Act.

Section 55 of the Act requires the arbitrator to grant to the landlord an order of possession if a tenant's application to dispute the notice to end tenancy is dismissed. In this application, the tenants' application to dispute the Notice is dismissed (because they did not attend the hearing to plead their case). The landlord acknowledged, though, that an order of possession is now moot because the tenants vacated the rental unit a few months ago. As such, no order of possession is required or otherwise granted.

Subsection 55(1.1) of the Act, however, states that 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."

In this dispute, the tenants' application was related to the landlord's Notice for non-payment of rent, the Notice I find complies with section 52 of the Act, and the tenants' application is dismissed. Therefore, the landlord is granted an order against the tenants requiring them to pay the unpaid rent in the amount of \$7,800.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy ended sometime in February 2022, the landlord is hereby ordered and authorized to retain the tenants’ security and pet damage deposits (totalling \$2,150.00) in partial satisfaction of the above-noted award for arrears.

The landlord is issued a monetary order in conjunction with this decision, in the amount of \$5,650.00. Pursuant to section 67 of the Act the tenants are hereby ordered to pay to the landlord the amount of \$5,650.00. Should the tenants not pay this amount then the landlord must serve a copy of the monetary order on the tenants and if necessary, enforce the order in the Provincial Court of British Columbia.

### Conclusion

**The tenants’ application is dismissed without leave to reapply.**

**The landlord is authorized and ordered to retain the tenants’ security and pet damage deposits of \$2,150.00.**

**The landlord is granted a \$5,650.00 monetary order, a copy of which must be served on the tenants.**

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

Dated: April 5, 2022

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Residential Tenancy Branch