



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code            CNR, CNL, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on January 23, 2022, as amended on February 24, 2022. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice);
- an order that the Landlord comply with the Act, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail at the end of January 2022 but could not recall the date of service. The Landlord acknowledged receipt. The Tenants testified the amendment was served on the Landlord by registered mail at the end of February 2022 but could not recall the date of service. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord did not submit documentary evidence in response to the Application.

The parties were advised that Rule of Procedure 6.11 prohibits the recording dispute resolution hearings. All in attendance confirmed they were not recording the hearing.

The parties were in attendance or were represented and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Issues

Neither the Landlord nor the Tenants submitted copies of the 10 Day Notice or the Two Month Notice into evidence. Accordingly, after hearing the evidence and submissions of the parties, I provided the parties with the opportunity to upload copies of these documents to the Residential Tenancy Branch Dispute Management System. The parties were advised of what documents were required, that they would be given until 3:00 pm on April 12, 2022, and that I would not consider any other evidence submitted. Neither the Landlord nor the Tenants uploaded the requested documents before the deadline.

### Issues to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice?
2. Are the Tenants entitled to an order cancelling the Two Month Notice?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation, and/or the tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed the Tenants moved into the rental property 4-5 years ago and that the Tenants did not pay a security deposit. They agreed about little else.

The Landlord testified that she inherited the property from her stepfather, who died in January 2022. The Landlord testified she was her stepfather's power of attorney before his death and is now the executor of the estate. The Tenants questioned the validity of the power of attorney document and suggested the Landlord is not the stepdaughter of the deceased.

The Landlord testified that rent of \$2,800.00 per month is due on the first day of each month. The Tenants testified that rent is due in the amount of \$1,675.00 per month, and that the due date was "flexible" when dealing with the Landlord's stepfather.

As noted above, neither of the parties submitted a copy of the 10 Day Notice into evidence. However, they provided details in their oral testimony. Specifically, the Landlord testified the Tenants have not paid any rent since September 2021. Accordingly, the Landlord issued the 10 Day Notice, dated January 14, 2022. The Landlord testified the 10 Day Notice was served on the Tenants by registered mail on January 14, 2022, and Tenants acknowledged receipt on January 18, 2022. The 10 Day Notice indicates that rent of \$14,000.00 was outstanding at that time. The Landlord testified the Tenants did not pay rent in February, March, and April 2022. No issues were raised with respect to whether the 10 Day Notice meets the form and content requirements of the Act.

In reply, the Tenants acknowledged rent has not been paid since September 2021. They testified this is because the Landlord agreed to set up "Interac" payments but has not done so. They testified they have tried to contact the Landlord regarding the payment of rent but have not received a response.

However, the Landlord testified the Tenants have been in possession of her contact information at least since a previous dispute resolution hearing on October 25, 2021. The Landlord also testified that the Tenants were provided with an email address and phone number to which they could have directed payment of rent. The Landlord testified the email address provided matched the name of the rental property to make it easy for the Tenants to remember.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the Act confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent.

In this case, I find the Tenants received the 10 Day Notice on January 18, 2022, and disputed it on time on January 23, 2022.

Although the parties disagreed with respect to the amount of rent due, the Landlord and the Tenants testified that rent has not been paid since September 2021. No issues were raised with respect to whether the 10 Day Notice meets the form and content requirements of the Act.

Further, I find that the Tenants' claims about the validity of the Landlord's power of attorney, her relationship to her stepfather, and the inability to contact the Landlord to pay rent were little more than attempts to obfuscate the fact that rent has not been paid for 8 months. I find that the 10 Day Notice is upheld and the Tenants' request to cancel it is dismissed.

Section 55(1) confirms that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant to the landlord an order of possession of the rental unit.

Therefore, based on the oral testimony of the parties, I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenants.

Section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring the payment of the unpaid rent

Based on the oral testimony of the parties, I find the Landlord has provided insufficient evidence to establish that rent is \$2,800.00 per month. The Landlord did not submit a tenancy agreement or any other documentation in support of the amount of rent due. However, the Tenants testified that rent is \$1,675.00 per month. Considering the contradictory evidence of the parties, including the Tenants' admission that rent has not been paid since September 2021, I find the Landlord is entitled to a monetary award of \$13,400.00 (\$1,675.00 x 8 months) for unpaid rent to April 30, 2022.

As the tenancy is ending based on the 10 Day Notice, it has not been necessary to address the Tenants' requests for an order cancelling the Two Month Notice and an order that the Landlord comply with the Act, regulations, and/or the tenancy agreement. These aspects of the Tenants' application are dismissed.

As the Tenants' application has not been successful, I find that the request to recover the filing fee is dismissed.

### Conclusion

The Tenants' application – including a request for an order cancelling the 10 Day Notice – is dismissed without leave to reapply.

Pursuant to section 55(1), the Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 55(1.1) of the Act, the Landlord is granted a monetary order of \$13,400.00 for unpaid rent. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 13, 2022

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Residential Tenancy Branch