



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenants' Application: **CNR, RR, RP, FFT**

Landlord's Application: **OPR-DR, MNR-DR, FFL**

### Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act;
3. An Order for repairs to the unit, I have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for a 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, AD, and the Tenants, TB and BB, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the 10 Day Notice by email on January 2, 2022. The Tenants confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was deemed served on the Tenants on January 5, 2022 pursuant to Sections 43(1) and 44 of the Residential Tenancy Regulation (the “Regulation”).

The Tenants confirmed that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing by using a permitted email address for service purposes on January 18, 2022 (the “NoDRP package”). The Landlord confirmed receipt of the NoDRP package and evidence from the Tenants. I find that the Landlord was deemed served with the NoDRP package on January 21, 2022, in accordance with Sections 43(2) and 44 of the Regulation.

The RTB issue date for the Landlord’s Notice of Dispute Resolution Proceeding package application for dispute resolution was January 20, 2022 (the “NoDRP package-OP/MN”). The Landlord confirmed that he served the Tenants with his NoDRP package-OP/MN and evidence by email after receiving the package from the RTB. The Tenants confirmed receipt of the NoDRP package-OP/MN and evidence from the Landlord. Neither party provided a date for this email message. I find that the Tenants were deemed served with the NoDRP package-OP/MN on January 23, 2022, in accordance with Sections 43(2) and 44 of the Regulation.

At the outset of the hearing, Tenant TB testified that he had moved out of the basement suite in the residential property at the end of December 2021. Tenant TB moved in with his father in the upstairs unit of the home. Tenant BB said he will be moving out the upstairs rental unit, the latest, April 12, 2022. As the downstairs Tenants have vacated the rental unit and the upstairs Tenants are soon to vacate the rental unit, I dismiss the Tenants’ applications without leave to re-apply.

### Preliminary Matter

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, and pursuant to Section 64(3)(c) of the Act, I accept the Landlord's evidence that additional rent is owing since filing his original application from \$1,580.00 to \$10,075.00 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?
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 parties confirmed that this tenancy began as a fixed term tenancy on September 15, 2021. The fixed term was to end on September 15, 2022. Monthly rent is \$3,380.00 payable on the first day of each month. A security deposit of \$1,690.00 and a pet damage deposit of \$550.00 were collected at the start of the tenancy and are 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 \$3,380.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 15, 2022.

The Landlord testified that the following amounts are outstanding for rent on the property:

<b>RENT</b>	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
December 2021	\$3,380.00	\$3,225.00	\$155.00
January 2022	\$3,380.00	\$1,800.00	\$1,735.00
February 2022	\$3,380.00	\$1,800.00	\$3,315.00
March 2022	\$3,380.00	\$0.00	\$6,695.00
April 2022	\$3,380.00	\$0.00	\$10,075.00

On March 8, 2022, the Landlord issued a 10 Day Notice for unpaid utilities in the amount of \$143.90. The effective date of this notice was March 21, 2022. The Landlord stated that the Tenants did not pay the utility bill from the city. The Landlord said he forwarded the utility bill to the Tenants, but they ignored it. The Tenants stated they paid their own hydro and internet.

The tenancy agreement lists that the fridge, dishwasher and stove and oven are included in the rent. The Landlord pointed out that water is not selected as a facility included in the rent and the Tenants owe this expense.

The Tenants said there is a rat problem in this home. The Tenants saw evidence of rat droppings under the kitchen sink in the downstairs unit. The Tenants tried to deal with the problem. They bought rat traps and caught four rats. They told the Landlord about this and when they found rat droppings in their bed and couch, they said they needed an exterminator for this problem.

In December, the Landlord received \$3,225.00 for December's rent. The Tenants used the remaining \$155.00 to buy products to treat the rat problem. The Tenants lost the receipt and said they would be responsible for that payment.

The Tenants downstairs gave notice by text messaging that they were moving out of the downstairs rental unit because the rats were taking over. The Landlord testified that he received this notice on January 1, 2022.

### 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. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

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 Regulation 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:

***Landlord's notice: non-payment of 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].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) pay the overdue rent, in which case the notice has no effect, or*
  - (b) dispute the notice by making an application for dispute resolution.*
- ...
- (6) *If*
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*
  - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

On January 5, 2022, the Tenants were deemed served with the 10 Day Notice. The Tenants applied for dispute resolution on January 7, 2022 within the 5 days after receiving the 10 Day Notice. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act.

The Tenants were inundated with a rodent problem in the rental unit. One Tenant living downstairs moved up into the upstairs property with his father after sending a text message to the Landlord that he could no longer live in the downstairs unit. The Tenant can provide a written notice to end their tenancy, but, in this matter, that notice must comply with Sections 45(2) and 52 of the Act, and I do not find that the downstairs' Tenant's text message to the Landlord allows him to end this tenancy. It is premature.

Going forward, the father only paid his share of the rent for January and February which, for him, was \$1,800.00. The total monthly rent for the residential property was \$3,380.00 per month, so an \$1,800.00 per month rental payment left a \$1,580.00 shortfall each month. Section 26(1) of the Act specifies that a Tenant must pay rent when it is due unless the Tenant has a right under the Act to deduct all or a portion of the rent. The Tenants did not have authority to deduct any portion of the rental amount. I find that the Tenants have breached Section 26(1) of the Act and I dismiss the Tenants' application to cancel the 10 Day Notice without leave to re-apply.

The Landlord did not provide evidence, or at least he did not point me to his evidence, that he gave the Tenants a written demand for payment of the utilities. I dismiss this part of the Landlord's evidence with leave to re-apply, as I do not find that the Tenants were given a written demand for payment of the utilities.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

- 55** (1) *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.*
- (1.1) 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.*

Based on the testimonies of both parties, I have dismissed the Tenants' application to cancel the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants. The Landlord is also entitled to a Monetary Order to recover the outstanding rent amounts pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$10,075.00. 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 and pet damage deposits 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:	\$10,075.00
Less security deposit:	-\$1,690.00
Less pet damage deposit:	-\$550.00
Plus Application Filing Fee:	\$100.00
TOTAL OWING:	\$7,935.00

#### Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$7,935.00. 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 13, 2022

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Residential Tenancy Branch