



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenants: **CNR, RR, RP/CNR, MNDCT**  
Landlord: **FFL, MNR-DR, OPR-DR**

### 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 for rent reduction 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, the Tenants have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 of the Act; and,
4. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act.

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

1. An Order of Possession for 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, CJ, and the Tenants, RB and SP, 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 Tenants with the first 10 Day Notice on December 27, 2021 by posting the notice on the Tenants’ door. The Landlord also stated she put a copy in the Tenants’ mail slot. The Tenants confirm receipt of the first 10 Day Notice. I find the first 10 Day Notice was deemed served on the Tenants on December 30, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenants with a second 10 Day Notice on February 2, 2022 by posting the notice on the Tenants’ door. The Landlord also stated she put a copy in the Tenants’ mail slot. The Tenants confirm receipt of the second 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenants on February 5, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenants testified that they served the Notice of Dispute Resolution Proceeding package and their evidence to the Landlord via Canada Post registered mail on January 28, 2022 (the “NoDRP package and evidence”). The Tenants referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package but not the evidence on March 25, 2022. Canada Post confirms delivery of the NoDRP package on February 2, 2022. I find that the Landlord was deemed served with the Tenants’ NoDRP package on February 2, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that she served the Tenants with the Notice of Dispute Resolution Proceeding package-OP/MN for this hearing on March 4, 2022 by Canada Post registered mail (the “NoDRP package-OP/MN”). The Landlord referred me to the Canada Post registered mail receipts and tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenants confirmed receipt of the NoDRP package-OP/MN but could not remember the date. I find that the Tenants were deemed served with the NoDRP package-OP/MN five days after mailing them, on March 9, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenants submitted two Amendments, the first dated January 25, 2022 and the second dated February 10, 2022. The Tenants testified that they served these documents by sliding them under the Landlord's door. The Tenants did not remember the date they served these documents. The Landlord stated she did not receive either Amendment. Pursuant to Section 88 of the Act, Amendments, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service provided for in the regulations.*

Placing a copy of a document under the recipient's door is not recognized by the legislation as a permissible way of serving a document. As the Tenants did not serve the Landlord in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision

maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65. I find that service of both Amendments was not effected and it would be administratively unfair to proceed on the Tenants' Amendments against the Landlord. I dismiss these Amendments without leave to re-apply and will not consider them in this decision.

### Preliminary Matter

#### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice at this proceeding. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

#### *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 \$6,000.00 to \$10,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?

3. Is the Landlord entitled to a Monetary Order for unpaid rent?
4. 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 February 1, 2021. The fixed term ended on January 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons in the Landlord's first 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$2,000.00 in outstanding rent on December 1, 2021. The first 10 Day Notice also stated that the Tenants owed \$809.81 for hydro and gas; however, the notice does not state when the written demand was issued for the outstanding utilities. The effective date of the 10 Day Notice was January 5, 2022.

The reasons in the Landlord's second 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$6,000.00 in outstanding rent on December 1, 2021, January 1, 2022 and February 1, 2022. The second 10 Day Notice also stated that the Tenants owed \$1,420.85 for utilities, and under '*following written demand on: (DD/MM/YYYY)*', it states '*From July, Sept. 17, Oct. 16, Nov 14, Dec 14, 2021, Jan 2022*'. The effective date of the second 10 Day Notice was February 11, 2022.

The Landlord testified that since December 2021 to the hearing date, the Tenants have not paid rent. The Landlord stated that she just noticed that there were boxes marked off in the tenancy agreement that she did not do. She pointed to how X's were made in the tenancy agreement under the 'What is included in the rent' Section of their tenancy agreement. She states her X's stay within the boxes, while the X's checking off heat and carpets are marked differently.

b) What is included in the rent: (Check only those that are included and provide additional information, if needed.)

The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Stove and Oven	<input checked="" type="checkbox"/> Window Coverings	<input type="checkbox"/> Storage
<input type="checkbox"/> Electricity	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Garbage Collection
<input checked="" type="checkbox"/> Heat	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Laundry (free)	<input type="checkbox"/> Parking for <u>2</u> vehicle(s)
<input checked="" type="checkbox"/> Furniture	<input checked="" type="checkbox"/> Carpets	<input type="checkbox"/> Sheets and Towels	<input type="checkbox"/> Other: <span style="border: 1px solid black; display: inline-block; width: 150px; height: 1.2em; vertical-align: middle;"></span>
<input type="checkbox"/> Additional Information: <span style="border: 1px solid black; display: inline-block; width: 380px; height: 1.2em; vertical-align: middle;"></span>			

The Landlord asked me to review her paper application for Dispute Resolution by Direct Request to see how she fills in X's in boxes on that form. Any box that was selected and marked with an X, the X is completely within the boxes or circles within each selection. In contrast, the Tenants' Monetary Worksheet form also has boxes or circles for selections, and the majority of these X's clearly go outside the boxes or circles within each selection.

The Landlord's basement tenants moved out, she said, because of the noise. The Landlord fixed up the basement unit and she moved into it in May 2021. The Landlord said the Tenants have not paid the utilities since July 2021. The upper unit is bigger than the basement unit, and the Landlord would divide up the utility bills corresponding to the upper unit paying 2/3 of the bill, and the basement unit paying 1/3 of the bill. The Landlord's March 3, 2022 NoDRP said she is seeking \$7,420.85 in unpaid rent (\$6,000.00) and utilities (\$1,420.85).

The Landlord provided BC Hydro bills as follows:

HYDRO	
2021 06 28	\$169.38
2021 08 27	\$252.79
2021 10 28	\$169.35
2021 12 29	\$291.20
Total	\$882.72

The Tenants testified that it is true they owe \$10,000.00 in unpaid rent. The Tenants stated that Tenant RB was injured at work and resources from BC Services does not cover living expenses. The Tenants stated they were trying to contact the Landlord for a payment plan, but making this kind of arrangement has been difficult.

The Tenants testified that when they first moved into the rental unit, the Landlord would give them the bills. Tenant RB said he asked the Landlord for a breakdown of all the bills and it took 52 days to get the information from the Landlord. By that time, the bills were overdue. In June 2021, the Landlord served the Tenants with a 10 Day Notice for outstanding utilities amounts, and the Tenants paid their portion of three Fortis gas bills. Tenant RB said the Landlord told them in conversation that the utilities bills would be 50/50 when the Landlord gave them their first bill. The Landlord denied this statement.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$10,000.00 plus utilities.

### 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 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:

### ***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.*

- (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.*
- (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.*

The Tenants were deemed served with the first and second 10 Day Notices on December 30, 2021 and February 5, 2022 respectively. Section 53(2) of the Act states, *'If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.'* I find the corrected effective dates for the first and second 10 Day Notices are January 6, 2022 and February 12, 2022. I find that the Landlord's 10 Day Notices complied with the form and content requirements of Section 52 of the Act.

The Tenants applied for dispute resolution on January 4, 2022 for a 10 Day Notice they said was served on December 31, 2021. The Tenants also applied for dispute resolution on January 14, 2022 for a 10 Day Notice they said was served on December 27, 2021. The Tenants wanted to amend their claims for dispute resolution after receipt of the February 2, 2022 10 Day Notice, but as the Tenants did not properly serve the Landlord with this Amendment, I previously found service not effected and I dismissed their claims without leave to re-apply.

The Tenants agree that they have not paid rent since December 2021. I find that the Tenants owe \$10,000.00 in outstanding rent and I dismiss all their applications to cancel the Landlord's 10 Day Notices without leave to re-apply.

The tenancy agreement in this matter specifies that electricity is not included in the rent. However, I do find that heating is included in the rent as this was what both parties



agreed to. I will not be deciding what is or is not included in the rent based on the styles of the X's in boxes in the tenancy agreement. Both parties signed the agreement and I find that both parties had ample time to review what they were agreeing to for this contract.

I find that the BC Hydro bills uploaded into documentary evidence are bills that will be shared between the Landlord and the Tenants. The Landlord said that the upstairs unit is larger than the downstairs unit, and I find there are, at least, three people living upstairs compared to just the Landlord downstairs. I find that a 2/3 split of the hydro bills is more than a fair breakdown for these expenses. I find, pursuant to Section 46(6) of the Act, the Tenants owe \$588.48 for the BC Hydro bills which is a 2/3 split of the total and will be treated as unpaid rent.

As the Tenants were not successful in their applications, 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.*

I have upheld the Landlord's 10 Day Notices 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 and utilities amounts pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$10,000.00 and the BC Hydro outstanding amount is \$588.48. 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:	\$10,000.00
TOTAL OUTSTANDING BC HYDRO:	\$588.48
Less security deposit:	-\$1,000.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$9,688.48

#### 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 \$9,688.48. 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 19, 2022

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Residential Tenancy Branch