



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenants: CNR, DRI-ARI-C, OLC, FFT  
For the landlords: MNRL-S, FFL

### Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- an order to dispute a rental increase, pursuant to section 43;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The landlords' application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:12 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlord JS (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented landlord SS. 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.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

I note the application submitted by tenant AM lists respondents landlords SS and JS. The application submitted by landlords JS and SS lists respondents tenants AM and JL.

Preliminary Issue – Service of the tenant’s application

The landlord affirmed she did not receive the notice of hearing for the tenant’s application. The landlord received a copy of the notice of hearing from the Residential Tenancy Branch (the RTB).

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

**The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:**

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

I accept the landlord’s convincing testimony that the tenant did not serve the notice of hearing.

Based on the foregoing, I dismiss the tenant’s application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

Preliminary Issue – Service of the landlords’ application

The landlord affirmed she served the notice of hearing for the landlord’s application by registered mail on February 10, 2022. The landlord affirmed the tenants moved out on January 27, 2022 and did not provide their forwarding address.

The landlord sent the packages to the tenant’s address recorded on the tenant’s notice of hearing. The tracking numbers and the address used by the landlord to serve the

landlord's notice of hearing are recorded on the cover page of this decision. The landlord included in the packages the notice of hearing, the evidence and the amendment (the landlord's materials).

RTB Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

Based on the landlord's convincing testimony, I find the landlord obtained the tenant's forwarding address in the tenant's notice of hearing emailed to the landlords by the RTB. The tenant's address recorded on the cover page of this decision is the address on the tenant's notice of hearing listed as the tenant's address for service.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the tenants with the landlord's materials in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the landlord's materials on February 15, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

### Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained

rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on April 15, 2020 and ended on January 27, 2022. Monthly rent was \$2,600.00, due on the fifteenth day of the month. At the outset of the tenancy a deposit of \$1,250.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the tenant is AS. The landlord affirmed that JL was an occupant of the rental unit.

The landlord is only claiming for the unpaid rent due on November 15, December 15, 2021 and January 15, 2022 in the amount of \$7,800.00 (\$2,600.00 x 3 months).

The landlord submitted text messages indicating electronic payments from the tenant prior to November 2021 and one payment on November 30, 2021. The landlord affirmed the November 30, 2021 payment was for rent due in October 2021.

The landlord submitted a monetary order worksheet.

### Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement:

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.

I accept the landlord's uncontested convincing testimony that the tenancy agreement requires the tenant to pay monthly rent of \$2,600.00 on the fifteenth day of the month, the tenant was AS and JL was an occupant of the rental unit.

Section 6(1) of the Act, the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement.

Based on the landlord's undisputed convincing testimony and the monetary order worksheet, I find the tenant is in arrears for November, December 2021 and January 2022 rent in the total amount of \$7,800.00.

Thus, per section 26(1) of the Act, I award the landlord \$7,800.00 for the unpaid rent of November, December 2021 and January 2022.

Per section 6(1) of the Act, as JL was an occupant, the monetary order is only against the tenant.

Filing fee, deposit and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's deposit of \$1,250.00 in partial satisfaction of the monetary award granted.

In summary:

Item	Amount \$
Unpaid rent November and December 2021 and January 2022 (\$2,600.00 per month x 3)	7,800.00
Filing fee	100.00
Subtotal	7,900.00
Deposit (minus)	1,250.00
<b>Total:</b>	<b>6,650.00</b>

Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$1,250.00 deposit and award the landlord \$6,650.00. The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: April 12, 2022