



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenants: CNR

Landlords: OPR-DR, MNR-DR, FFL

### **Introduction**

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenants applied on January 27, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 21, 2022 (the 10 Day Notice).

The Landlord applied on February 14, 2022 for:

- an order of possession, having issued the 10 Day Notice;
- a monetary order for unpaid rent, having issued the 10 Day Notice; and
- the filing fee.

The hearing began promptly at 1:30 p.m., and was attended by the Landlord, but not the Tenants. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified that the Notice of Dispute Resolution Proceeding and his evidence was served on each of the Tenants on February 18, 2022 by registered mail, and provided two tracking numbers, as noted on the cover page of this decision. Based on the Landlord's testimony, and having checked the tracking numbers, I find the Landlord's documents served on the Tenants on February 18, 2022, in accordance with section 89 of the Act, and deem the documents received by the Tenants on February 23, 2022, in accordance with section 90.

### Preliminary Matters

As the Tenants did not attend the hearing, I dismiss their application.

Because the rental unit is named variously as “suite up,” “suite,” “coach house,” and “upper suite,” in the 10 Day Notice, the tenancy agreement, the Tenants’ application, and the Landlords’ application, respectively, I asked the Landlord about the naming of the rental unit. As the Landlord indicated the rental unit should be referred to as “secondary suite,” I have described it as such on the cover page of the decision and in the orders. This amendment is in accordance with section 64(3)(c) of the Act.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

### Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began April 16, 2021; rent is \$1,650.00, due on the first of the month; and the Tenants paid a security deposit of \$825.00, which the Landlord still holds.

A copy of the tenancy agreement is submitted as evidence.

The Landlord testified that the Tenants have moved out some of their possessions, but the Landlord does not have possession of the rental unit.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the Notice was served on the Tenants by attaching it to the door on January 21, 2022, and provided a photo of the posted documents. The Tenants’ application indicates they received the 10 Day Notice on January 21, 2022.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$1,650.00, due on January 1, 2022.

The Landlord testified he served the Tenants with additional 10 Day Notices in February and March 2022, and submitted a copy of the February notice as evidence. It indicates rent was not paid when due on February 1, 2022.

The Landlord submitted as evidence a Direct Request Worksheet, which indicates rent was not paid in January–March 2022.

The Landlord testified that the Tenants owe additional rent as follows:

Month	Monthly Rent	Rent Paid	Monthly Balance Owing
January 2022	\$1,650.00	\$0.00	\$1,650.00
February 2022	\$1,650.00	\$0.00	\$1,650.00
March 2022	\$1,650.00	\$0.00	\$1,650.00
April 2022	\$1,650.00	\$0.00	\$1,650.00
<b>Total rent owing</b>			<b>\$6,600.00</b>

In accordance with section 64(3)(c), I amend the Landlord's application to include the outstanding rent for April 2022.

### Analysis

Pursuant to section 46(1) of the Act, 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (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.

Based on the Landlord's affirmed undisputed testimony and documentary evidence, and the Tenant's application, I find the Landlord served the 10 Day Notice on the Tenants by posting it to the door on January 21, 2022, in accordance with section 88 of the Act, and that the Notice was received by the Tenants on the same day.

I find the 10 Day Notice meets the form and content provisions of section 52 of the Act as it is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

I find that the Tenants did not file an application for dispute resolution within 5 days of January 21, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 46(5) to have accepted that the tenancy ended and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

As the Landlord has indicated the Tenants are still in possession of the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, April 26, 2022.

Based on the Landlord's affirmed testimony and undisputed evidence, I find the Tenants owe unpaid rent for January–April 2022, in the amount of \$6,600.00, which they must pay the Landlord, pursuant to section 55(4) of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords are successful in their application, I order the Tenants to pay the \$100.00 filing fee the Landlords paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlords to retain \$825.00 of the Tenants' security deposit in partial satisfaction of the amount owed.

Therefore, I find the Landlord is entitled to a monetary order for \$5,875.00, as follows:

Unpaid rent	\$6,600.00
Filing fee	\$100.00
Security deposit	-\$825.00
<b>Total</b>	<b>\$5,875.00</b>

### Conclusion

The Landlords are granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$5,875.00. The monetary order must be served on the Tenants. 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 26, 2022

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Residential Tenancy Branch