



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenants: **FFT, CNR, OLC, MNDCT**  
Landlord: **MNDL-S, MNRL-S, OPR, MNDCL-S, 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 for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) 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 the 10 Day Notice pursuant to Sections 46 and 55 of the Act;
2. A Monetary Order to recover money for unpaid rent - holding security deposit pursuant to Sections 26, 38, 46 and 67 of the Act;
3. An Order for the Tenants to pay to repair damage - holding security deposit pursuant to Section 67 of the Act;
4. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, MV, and Legal Counsel, RA, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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's Agent, Legal Counsel and I were the only ones who had called into this teleconference. The Landlord's Agent and Legal Counsel was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agent and Legal Counsel that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agent and Legal Counsel testified that they were not recording this dispute resolution hearing.

The Landlord's Agent served the Tenants with the 10 Day Notice on March 2, 2022 by posting the notice on the Tenants' door. The Landlord's Agent had another tenant witness this posting and the Landlord's Agent uploaded a letter from the other tenant attesting to this service on March 2, 2022. The Tenants Notice of Dispute Resolution Proceeding stated that they received the 10 Day Notice on March 2, 2022. I find the 10 Day Notice was sufficiently served on the Tenants on March 2, 2022 according to Section 71(2)(b) of the Act.

The Tenants applied for dispute resolution on March 2, 2022, and a receipt was issued for payment of their filing fee on March 3, 2022. The Notice of Dispute Resolution Proceeding package was issued on March 14, 2022, and MV confirmed receipt on March 16, 2022 (the "NoDRP package"). I find that the Landlord was sufficiently served with the Tenants' NoDRP package on March 16, 2022 in accordance with Section 71(2)(c) of the Act.

The Landlord served their Notice of Dispute Resolution Proceeding package-OP/MN to the Tenants by posting the notice on their door on March 24, 2022 and by Canada Post registered mail on March 30, 2022 (the "NoDRP package-OP/MN"). Legal Counsel provided the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package-OP/MN on April 4, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served their evidence personally to the Tenants on April 14, 2022 and by Canada Post registered mail on April 6, 2022. Legal Counsel provided the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenants were deemed served with the Landlord's evidence on April 11, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matters

#### *Unrelated Claims*

Prior to the Landlord testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. Both the Tenants and the Landlord had indicated different matters of dispute on their applications, the most urgent of which is the Tenants' claim to cancel the 10 Day Notice and the Landlord's claim for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. I advised that not all of the claims on the applications are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice and the claim for recovery of the application filing fee, and the Landlord's request for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and the Landlord's claim for recovery of the application filing fee at this proceeding.

By the end of the hearing, the Tenants had not appeared, so I dismiss all their other claims without leave to re-apply.

The Landlord's additional claims are dismissed with leave to re-apply.

### Issues to be Decided

For the Tenants:

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice?

For the Landlord:

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
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 Landlord confirmed that this tenancy began as a fixed term tenancy on March 1, 2022. The fixed term was to end on February 28, 2023, then the tenancy would continue on a month-to-month basis. The Landlord's Agent allowed the Tenants to move in early on February 11, 2022. Monthly rent is \$2,850.00 payable on the first day of each month. A security deposit of \$1,425.00 was agreed on, but the Tenants only paid \$712.50 which was collected on February 4, 2022 and is still held by the Landlord.

On March 1, 2022, the Tenants texted MV saying, "*we have decided we are moving out there are too many things wrong with this apartment and is not worth the asking price you can send us an eviction notice for not paying*". The Landlord served the 10 Day Notice on the Tenants on March 2, 2022, the effective date of the 10 Day Notice was March 11, 2022.

As of April 22, 2022, the Tenants still resided in the rental unit, but have not paid the other half of the security deposit, and have not paid any rent. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$6,745.00.

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

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.*
- ...

The 10 Day Notice was sufficiently served on the Tenants on March 2, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on March 3, 2022 within the 5 days after receiving the 10 Day Notice. The Tenants did not attend this hearing to give evidence about the outstanding rent amount although provided notice of this hearing date. Pursuant to Section 46(5)(a), I find that the Tenants are conclusively

presumed to have accepted that the tenancy ended on the effective date, which was March 11, 2022 and I dismiss their application to cancel the Landlord's 10 Day Notice without leave to re-apply. I uphold the Landlord's 10 Day Notice.

As the Tenants were unsuccessful in their application, 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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 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 amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$6,745.00. 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 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:	\$6,745.00
Less security deposit:	-\$712.50
Plus application filing fee:	\$100.00
TOTAL OWING:	\$6,132.50

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 \$6,132.50. 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 22, 2022

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Residential Tenancy Branch