



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MNRL-S, MNDCL, MNDL-S, OPU, FFL

### Introduction

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

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:17 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord DG ("landlord") attended the hearing with their son, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, their son, and I were the only ones who had called into this teleconference for this hearing.

I note this was a hearing that was re-scheduled from May 3, 2022. The landlord testified that the tenants were personally served with a copy of the original dispute resolution hearing package ('Application'), amendment, and evidence on February 10, 2022. This was witnessed by PS. PS attended the hearing to confirm that they witnessed the service of the package on February 10, 2022, as well as on May 3, 2022 when the landlord had served the tenants with the new Notice of Hearing for the new hearing date. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants duly served with the original hearing documents and the February 10, 2022 amendment. I also find the tenants deemed served with the new Notice of Hearing on May 6, 2022, 3 days after posting. The tenants did not submit any written evidence for this hearing.

The landlord testified that the tenants were served the 10 Day Notice dated January 3, 2022, by posting the notice on their door. The landlord provided a photo of the 10 Day Notice posted on the tenants' door. In accordance with sections 88 and 90 of the Act, the 10 Day Notice I find the 10 Day Notice deemed served on January 6, 2022, three days after its posting.

**Preliminary Issue – Amendment to Landlord's Application**

The landlord submitted a new monetary worksheet dated May 3, 2022 for a monetary order of \$8,837.78. The landlord submitted photos to show that the new monetary order worksheet was posted on the tenants' door.

Residential Tenancy Policy Guideline #23 sets out of the sequence of events that must be followed in amending an application, including the following steps:

- 1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);*
- 2. the applicant submits this form and a copy of all supporting evidence to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;*
- 3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;*
- 4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and*
- 5. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.*

Although the landlord did upload a copy of the amended monetary order worksheet, and served the tenants with a copy of the worksheet, the landlord did not follow the specific step as outlined in Step 2. The landlords had properly filed an amendment on February 4, 2022 to change their claim to \$6,074.00. As a proper amendment wasn't filed to add the additional claims as specified on the May 3, 2022 monetary order worksheet, only the monetary claims as listed on the February 4, 2022 amendment will be considered.

RTB Rules of Procedure 4.2 does allow 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. In this case, since February 4, 2022, the tenants have failed to pay rent for the months of March 2022 through to May 2022. Since the filing of this application and February 4, 2022 amendment, another \$7,500.00 in rent has become owing that was not included in the original application. I have accepted the landlords' request to amend their application from \$6,074.00 to \$13,574.00 (plus the \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

### **Issues to be Decided**

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent or money owed?

Are the landlords entitled to recover the filing fee?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2021, with currently monthly rent set at \$2,500.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$1,250.00 and a pet damage deposit in the amount of \$600.00, which the landlords still hold.

The landlords served the tenants with a 10 Day Notice for unpaid rent and utilities on January 3, 2022 for failing to pay \$2,750.00 in outstanding rent, and \$600.00 in outstanding utilities.

The landlords provided the following Monetary Order Worksheet of the monies out by the tenants:

<b>Item</b>	<b>Amount</b>
December rent	\$250.00
January 2022-May 2022 rent	12,500.00

Gas Bill due December 2021	228.98
Gas Bill January 2022	321.13
Water & Sewer	115.91
Hydro Bill-December 2022	157.99
<b>Total Monetary Order Requested</b>	<b>\$13,574.01</b>

The landlord testified that the arrears have caused a significant financial hardship on the landlords. The landlords testified that the tenants continue to accrue outstanding rent and utilities. The landlords request an Order of Possession as well as a monetary order for the outstanding amounts.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenants failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenants pay the outstanding rent. Accordingly, I find the tenants conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, January 16, 2022.

Section 26 of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) 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.

The landlord provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$12,750.00. I am not satisfied that the tenants had the right to withhold this amount. Accordingly, I allow the landlords' monetary claim for unpaid rent.

I am satisfied that the landlord provided sufficient evidence to support that the tenants have failed to pay the outstanding utilities. Accordingly, I allow the landlords a monetary order in the amount of \$825.01 for outstanding utilities accrued up to February 2022.

The landlords continue to hold the tenants' security deposit of \$1,250.00 and pet damage deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the deposits in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I find that the landlords are entitled to recover the filing fee for this application.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a **\$11,824.01** Monetary Order in favour of the landlords as set out in the table below:

<b>Item</b>	<b>Amount</b>
December rent	\$250.00
January 2022-May 2022 rent	12,500.00
Gas Bill due December 2021	228.98
Gas Bill January 2022	321.13
Water & Sewer	115.91
Hydro Bill-December 2022	157.99
Filing Fee	100.00
Less deposits held	-1,850.00
<b>Total Monetary Order</b>	<b>\$11,824.01</b>

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 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: May 13, 2022

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Residential Tenancy Branch