



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-DR, FFL**

### **Introduction**

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (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 Landlords, CV and HP, 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlords that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlords testified that they were not recording this dispute resolution hearing.

The Landlords served the Tenants with the 10 Day Notice on January 3, 2022 by posting the notice on the Tenants' door. The Landlords uploaded a witnessed Proof of Service #RTB-34 form confirming service of the 10 Day Notice. I find the 10 Day Notice

was deemed served on the Tenants on January 6, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlords testified that they served the Tenants with the Notice of Dispute Resolution Proceeding package-OP/MN on January 26, 2022 by Canada Post registered mail (the “NoDRP package-OP/MN”). The Landlords referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package-OP/MN on January 31, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for a 10 Day Notice?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords 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 Landlords confirmed that this periodic tenancy began on October 15, 2021. Monthly rent is \$1,250.00 payable on the first day of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlords testified that the Tenants moved out of the rental unit at the end of January 2022, and they no longer require an Order of Possession. The Tenants did not pay January’s rent, and the Landlords seek a Monetary Order for \$1,250.00 for unpaid rent.

### 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 Landlords' 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].
- ...
- (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 Landlords' 10 Day Notice was deemed served on the Tenants on January 6, 2022. I find that the Landlords' 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants did not apply for dispute resolution

after receipt of the 10 Day Notice; therefore, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was January 17, 2022.

I must consider if the Landlords are entitled to an Order of Possession and a Monetary Order for unpaid rent. Sections 55(2) and 55(4) of the Act read as follows:

***Order of possession for the landlord***

**55** ...

(2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

...

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

The Tenants did not apply for dispute resolution after receipt of the 10 Day Notice and the time for making that application has expired. The Landlords testified that they no longer require an Order of Possession, but need a Monetary Order to recover unpaid rent. I find the Landlords are entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. Further, pursuant to Section 72(2)(b) of the Act, I Order that the Landlords are authorized to retain the security deposit held by the Landlords in partial satisfaction of the monetary award. Having been successful, I find the Landlords are entitled to recover the application filing fee paid to start this application. The Landlords' Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$1,250.00
Less security deposit held by Landlords:	-\$625.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$725.00

Conclusion

I grant a Monetary Order to the Landlords in the amount of \$725.00. 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: May 18, 2022

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Residential Tenancy Branch