



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU, MNRL, MNDCL, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlords applied on January 26, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 14, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent;
- compensation for monetary loss or other money owed; and
- the filing fee.

The hearing started promptly at 9:30 a.m., and only Landlord TG was present. He 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 evidence was served on each of the Tenants on February 11, 2022 by registered mail, and provided two tracking numbers, as noted on the cover page of this decision. I find the Landlords' documents served on the Tenants on February 11, 2022, in accordance with section 89 of the Act, and deem the documents received by the Tenants on February 16, 2022, in accordance with section 90 of the Act.

### Preliminary Matters

The Residential Tenancy Branch Rule of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the issuance of the 10 Day Notice, I dismiss, with leave to reapply, the Landlords' claim for compensation for monetary loss or other money owed.

### Issues to be Decided

- 1) Are the Landlords entitled to an order of possession?
- 2) Are the Landlords entitled to a monetary order for unpaid rent and/or utilities?
- 3) Are the Landlords entitled to the filing fee?

### Background and Evidence

In the application, the rental unit is listed using a street address without a unit number. During the hearing the Landlord confirmed the rental property has multiple tenants, and that the Tenants' rental unit can best be described as "living room, first floor."

The Landlord submitted as evidence a "sworn statement" dated January 25, 2022, which includes the following:

- The tenancy agreement is a verbal one.
- The Landlord closed on the purchase of the dispute address on August 5, 2021.
- Six tenants were living in the home at the time of purchase. The agreed upon rent was \$1,900.00 for the six tenants, which included \$100.00 for utilities, but, if the utilities exceeded \$100.00, the tenants would have to pay the Landlord the difference.
- The rent for August 2021 was \$316.67 per person (\$1,900/6).
- The Landlord received no rent for August 2021.
- After receiving the first utility bill, the Landlord found that utilities were more than \$100.00 a month, advised the tenants, and it was agreed the monthly rent would be \$2,000.00, including \$200.00 for utilities. The Landlord's sworn statement indicates that "the base rent remained the same at \$1,800.00."
- The rent for September and October 2021 was \$333.00 per person (\$2,000.00/6).

- The respondent Tenants paid rent in September and October 2021.
- In October it was agreed that rent would be split between 5 people, and any utilities beyond \$200.00 would be paid to the Landlord, per the previous arrangement.
- The rent for November 2021 to January 2022 was \$400.00 per person per month (\$2,000/5).
- The respondent Tenants did not pay rent for November 2021 to January 2022.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the Notice was served on the Tenants on September 14, 2021 by leaving a copy with an adult who resides in the rental property.

The 10 Day Notice is dated by the Landlord, states the 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 \$1,306.00 due on August 5, 2021. The Landlord explained that though rent was due on the first of the month, the rent for August 2021 was due on August 5, 2021 because this is the day his purchase of the rental property was completed.

I asked the Landlord how he came to the amount of \$1,306.00 owing, as indicated on the Notice. He testified that was the rent for August 2021 and September 2021 combined, and that rent for the two respondent Tenants was \$653.00 a month at that time, as there were six people living in the home who split the rent between them. The Landlord testified that the Tenants paid him \$650.00 for September rent, toward the end of September, after being served the 10 Month Notice.

Later in the hearing, the Landlord testified that rent for each of the tenants was “approximately” \$316.67 a month for August, September, and October 2021. (Therefore, for the two subject Tenants, this equals a monthly rent of \$633.34, a different amount than previously indicated by the Landlord.) The Landlord also changed his testimony on how he came to the \$1,306.00 on the 10 Day Notice; later stating that the amount was for both rent and utilities for August and September 2021.

The Landlord submitted as evidence a summary of rent owing for each of the respondent Tenants; the “Times 2” amount is the total amount owing for both of the respondent Tenants:

<b>Rent Due</b>	
<b>August</b>	\$ 316.67
<b>November</b>	\$ 400.00
<b>December</b>	\$ 400.00
<b>January</b>	\$ 400.00
	\$ 1,516.67
<b>Times 2</b>	<b>\$ 3,033.33</b>

During the hearing, the Landlord testified that rent was paid and owing by the two respondent Tenants as follows; the Landlord testified these amounts were for rent only, and did not include utilities:

Month	Rent owing for the 2 respondent Tenants	Rent owing per Tenant	Rent paid	Monthly outstanding
August 2021	\$633.34	\$316.67	\$0.00	\$633.34
September 2021	\$633.34	\$316.67	\$650.00	-\$16.66
October 2021	\$633.34	\$316.67	\$633.34	\$0.00
November 2021	\$800.00	\$400.00	\$0.00	\$800.00
December 2021	\$800.00	\$400.00	\$0.00	\$800.00
January 2022	\$800.00	\$400.00	\$0.00	\$800.00

The Landlord testified that rent increased to \$500.00 per person (or \$1,000.00 for the 2 respondent Tenants) in February 2022, due to an increase in the utilities, and that the respondent Tenants have also not paid rent for February–April 2022.

## Analysis

Pursuant to section 13 of the Act, a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004 and the agreement must contain specific information, such as the legal names of the tenant(s) and landlord, and the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

As there is no written tenancy agreement, I must rely on the Landlord's testimony and documentary evidence to determine the terms of the tenancy agreement that allegedly exists between the Landlord and the respondent Tenants.

The Landlord described numerous tenants living the rental property and did not identify a unit within the rental property exclusively occupied by the two respondents, saying only that they occupy the living room. I note the Act states in section 28(c) a tenant is entitled to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29. I find it unlikely that the Tenants have exclusive possession of the living room for their dwelling when there are other tenants living in the rental property.

The Landlord's evidence was inconsistent about the amount of rent due under the tenancy agreement and who are the parties to the tenancy agreement. He provided information about one amount being due under the tenancy agreement (\$1,900 and then \$2,000) and provided information about amounts being due on a per capita basis (\$1900/6 and \$2000/5).

Policy Guideline 13 states that where multiple people live in a rental unit and pay part of the rent to the landlord, there is a presumption that they are co-tenants, unless there is compelling evidence to the contrary. Evidence such as separate tenancy agreements for each person, rent receipts, or receipts for different security deposits may help indicate whether the tenants are co-tenants, tenants sharing common space, or occupants. The Landlord provided none of this evidence.

Given the Landlord was unable to provide information about a rental unit of which the two respondent Tenants have exclusive possession, and explained the amount of rent due both in terms of one amount (e.g., \$1900) and individual amounts (e.g., 316.67), I find on a balance of probabilities the two respondent Tenants are co-tenants with other tenants at the rental property.

Co-tenants are jointly and severally responsible for paying the full amount of rent due each month. 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.

The Landlord provided affirmed testimony that the Tenants did not pay the rent for August 2021.

Though the 10 Day Notice is not signed by the Landlord and does not give the address of the rental unit as required by section 52 of the Act, I find the Landlord's name listed on the 10 Day Notice sufficient for meeting the requirement of 52(a), which states the notice must be signed and dated by the landlord. And, as the Tenants' names were on the 10 Day Notice, I find it is reasonable to assume that the Tenants realized that the 10 Day Notice was regarding their residence in the dispute address.

As I find the Tenants are co-tenants with other tenants in the rental property, I find service of the Notice was completed pursuant to section 88 of the Act because the Landlord gave a copy of the Notice to an adult residing in the rental property on September 14, 2021.

I find that the Tenants did not file an application for dispute resolution within 5 days of September 14, 2021, 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 on the effective date of the 10 Day Notice, September 25, 2021, 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 still occupy the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on April 29, 2022, the date of the hearing.

In his testimony and written submissions, the Landlord has provided conflicting evidence regarding the amounts for rent and utilities. I find the Landlord's evidence on rent not credible, and that he has provided insufficient evidence to support his claims. Therefore, I dismiss the claim for a monetary award for unpaid rent.

I make no finding regarding the amount of rent or utilities owed to the Landlords by the Tenants, and the Landlords are at liberty to make a new application for rent or utilities owed to them by the Tenants.

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 partially successful in their application, I order the Tenants to pay the \$100.00 filing fee the Landlords paid to apply for dispute resolution.

I find the Landlords are entitled to a monetary order for \$100.00.

### 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 \$100.00. 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: May 18, 2022

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Residential Tenancy Branch