



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0942104 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      TT: FFT, CNR, OLC, RP, RR, PSF, DRI  
                                 LL: FFL, OPU, MNDCL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on March 18, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 15, 2022 (the “10 Day Notice”);
- an order that the Landlord comply with the *Act*;
- an order for regular repairs;
- an order granting a rent reduction;
- an order that the Landlord provide a service or facility;
- to dispute a rent increase; and
- an order granting the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on March 29, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage, compensation, or loss;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord’s Agents M.J. and A.J. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Applications and documentary evidence packages. As there

were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenants' request for an order that the Landlord comply with the *Act*, an order for regular repairs, an order granting a rent reduction, an order that the Landlord provide a service or facility, and to dispute a rent increase are dismissed with leave to reapply.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?

5. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Tenant stated that his tenancy started about 5 years ago. The Landlord's Agents stated that they purchased the rental property in 2018. The parties agreed that the Tenants are required to pay rent in the amount of \$1,750.00 which is due to be paid to the Landlord on the first day of each month. The Tenant stated that he paid a security deposit to the previous owner in the amount of \$875.00. The Landlord's Agents stated that they did not receive any security deposit from the previous owner. The Tenant stated that he did not provide any evidence to support that a deposit was paid. The Tenant confirmed that he continues to occupy the rental unit.

The Landlord's Agents stated that the Tenants have failed to pay rent for the months of October 2021 to March 2022. As such the Landlord subsequently served the Tenants in person on March 15, 2022 with a 10 Day Notice dated March 15, 2022, with an effective date of March 25, 2022. The Tenant confirmed receipt on the same day. The Landlord's Agents testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$10,800.00.

The Landlord's Agents stated that the parties had verbally agreed that the rent would increase on October 1, 2021 to \$1,800.00 instead of \$1,750.00. As such, the Landlord is claiming for the increased amount of rent for the above-mentioned months. The Landlord confirmed that there was no official Notice of Rent Increase served to the Tenants.

The Landlord's Agents stated that the Tenants have made no payments towards the outstanding balance of rent owed to the Landlord. The Landlord's Agents stated that the Tenants have also not paid any amount of rent for April, or May 2022. The Landlord had also included a claim for June 2022 rent, however, as this amount of rent is not yet due, it will not be considered in this decision. Furthermore, the Landlord's Agent referred to further claims for disposing garbage from the property. It was explained to the Landlord's Agents during the hearing, that they are at liberty to apply for such claims, however, my decision would only address matters relating to unpaid rent.

The Tenant responded by stating that he had paid rent, and that the Landlord does not provide receipts for rent payments and that they refuse to fix anything in the rental unit. The Tenant stated that he had provided his own receipts in his evidence. The Tenant

stated that he did not pay rent to the Landlord for April and May 2022. The Tenant stated that he withdraws the rent money from his bank account each month to pay the Landlord in cash. The Tenant stated that he did not provide bank statements in support to demonstrate that the rent money was withdrawn each month.

### Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 42 of the Act outlines the allowable timing and notice of rent increases;

A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the Act outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

The Landlord's Agents testified that they served the Tenants in person with the 10 Day Notice dated March 15, 2022 with an effective vacancy date of March 25, 2022. As the Tenant confirmed receipt on March 15, 2022, I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until March 20, 2022 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I find that the Tenants applied to dispute the 10 Day Notice on March 18, 2022, therefore, they applied within the appropriate timelines.

In this case, the Landlord's Agents stated that the Tenants had failed to pay rent from October 2021 to March 2022 in the amount of \$10,800.00 as the Landlord had increased the rent to \$1,800.00 effective on October 2021. I find that the Landlord did not increase the rent in a fashion that is compliant with Section 42 of the *Act*. As such, I find that the Landlord is not entitled to claim for loss of rent at a rate of \$1,800.00 per

month. Instead, I accept that the parties agreed that the rent had been \$1,750.00 due on the first day of each month.

The Tenant stated that he paid rent in full aside from April and May 2022. I find that the Tenants have provided insufficient evidence to demonstrate that they paid rent to the Landlord in the amount of \$1,750.00 from October 2021 to March 2022. I do not accept the rent receipts which were created by the Tenants. I would have expected the Tenants to provide a bank statement to show that rent was withdrawn from their bank account each month. Furthermore, I accept the Tenant's testimony that he withheld rent from the Landlord for April and May 2022.

I find that the Tenants have breach Section 26 of the *Act* as I find that they have not paid rent in the amount of \$1,750.00 to the Landlord from October 2021 to May 2022, for an outstanding balance of rent owing in the amount of \$14,000.00.

In light of the above, I dismiss the Tenants' Application without leave to reapply. Under section 55 of the *Act*, when a Tenants' Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find the Landlord has established an entitlement to a monetary award for unpaid rent from October 2021 to May 2022 in the amount of **\$14,000.00**. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I find that the Tenants have provided insufficient evidence to demonstrate that they have paid a security deposit to the previous Landlord, therefore, I decline to order that the Landlord retain this amount.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$14,100.00.

### Conclusion

The Tenants have failed to pay rent and have breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$14,100.00. 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 31, 2022

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Residential Tenancy Branch