



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WONDERLAND INVESTMENT  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** Landlord: MNR-DR, OPR-DR, FFL  
Tenants: CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with each other’s Applications and evidence.

The tenants confirmed that they were served with a 10 Day Notice on March 2, 2022, which was posted on their door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notice on March 5, 2022, 3 days after posting.

Although the landlord had applied for a Monetary Order of \$1,700.00 in their initial claim, since they applied another \$1,850.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows 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. On this basis, I have accepted the landlord's request to amend their original application from \$1,600.00 to \$3,450.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### **Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### **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 September 1, 2016, with monthly rent currently set at \$750.00. The landlord had collected a security deposit in the amount of \$350.00, which the landlord still holds. Although the tenancy agreement stipulates that rent is payable on the first of the month, the tenants testified that the landlord has allowed rent to be paid at the end of the month to align with when the tenants get paid. The tenants submitted proof of rent payments to show that rent was normally paid near the end of the month.

The landlord served the tenants with a 10 Day Notice on March 2, 2022 for failing to pay the outstanding rent. The tenants are disputing the 10 Day Notice as they feel the 10 Day Notice is not valid. The tenants note that 10 Day Notice states that the landlord is ending the tenancy for the tenants' failure to pay \$1,600.00 by March 1, 2022. The

tenants testified that since rent was payable at the end of the month, the tenants only owed \$850.00 (\$100.00 for January 2022, \$750.00 for February 2022), and that March 2022 rent was not yet payable.

The landlord is requesting an Order of Possession as the tenants have only made one payment of \$400.00 on June 1, 2022. The landlord testified that the tenants now owe \$3,450.00 in outstanding rent. The tenants do not dispute that they owe \$3,450.00 in outstanding rent. The tenants testified that they were informed that they did not have to make any rent payments while awaiting the hearing date.

### **Analysis**

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 tenants argued that rent was payable at the end of the month, despite the fact that rent is normally due on the first of the month, as demonstrated by the landlord's acceptance of rent payments over a long period of time. In consideration of the evidence before me, I find that the tenants have established that rent was normally paid and accepted at the end of the month. I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

Although the tenancy agreement states that rent is to be paid by the first of the month, I find that the landlord has allowed the tenants to pay at the end of the month instead. Even in the absence of an amended or new tenancy agreement, I find that over time the landlord has implied that rent was now payable at the end of the month. I must now consider whether the 10 Day Notice is valid.

Section 46(4) of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. In this case, the tenants filed an application within the required time period disputing the validity of the 10 Day Notice.

Taking in consideration the fact that rent is payable at the end of the month, I find that the March 2022 rent was not yet payable at the time the 10 Day Notice was served on March 2, 2022. It is undisputed that the tenants owed \$100.00 for the January 2022 rent, and \$750.00 for February 2022 rent. It is also undisputed that the tenants have only made one payment after March 2, 2022, a \$400.00 payment on June 1, 2022.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although I find that the amount of outstanding rent noted on the 10 Day Notice is incorrect as the amount included the March 2022 rent, I find that the 10 Day Notice is still compliant with section 52 of the *Act*. However, I must still consider the validity of the 10 Day Notice, and whether the landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*, which states that “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.”

As it was undisputed that the tenants did owe outstanding rent at the time the 10 Day Notice was issued, I find that that the 10 Day Notice is still valid despite the incorrect amount indicated on the 10 Day Notice. The tenants’ application to dispute this 10 Day Notice does not relieve the tenants from their responsibility to pay the outstanding rent, nor do I find that the tenants were in possession of any previous orders that had allowed them to withhold or deduct this rent. Furthermore, the tenants failed to pay the \$850.00 that was owed within the required five days. Although the tenants were of the impression that they had the right to withhold rent while awaiting the hearing, the tenants failed to establish that they were granted this right by an Arbitrator or the landlord. As noted in section 26 of the *Act*, the tenants must pay rent when the rent is due, unless they had the right or permission to withhold this amount. In this case, I am not satisfied that the tenants had the right or permission to withhold any rent.

As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenants did not dispute the fact that they owe \$3,450.00 in outstanding rent for this tenancy. I therefore grant the landlord's application for a monetary order for the unpaid rent.

As the landlord was successful in their claim, I allow the landlord to recover the \$100.00 filing fee for their application.

The landlord continues to hold the tenants' security deposit in the amount of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim

### **Conclusion**

I dismiss the tenants' application to cancel the 10 Day Notice dated March 2, 2022.

I find the 10 Day Notice dated March 2, 2022 to be valid. I therefore grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants and any occupant 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 \$3,200.00 Monetary Order in favour of the landlord under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for January 2022-June 2022	\$3,450.00
Recovery of Filing Fee	100.00
Less Security Deposit	-350.00
<b>Total Monetary Order</b>	<b>\$3,200.00</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: June 16, 2022

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Residential Tenancy Branch