



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, CNR**

### Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, SA, and his wife, who the Landlord claims is also a Landlord, ZA, and Tenants, BS and SOM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

The Landlord personally served the 10 Day Notice on March 13, 2022. Landlord ZA witnessed service of the 10 Day Notice as noted on the Proof of Service #RTB-34 form uploaded into documentary evidence. The Tenants confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenants on March 13, 2022 pursuant to Section 88(a) of the Act.

The Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package and some of their evidence for this hearing on March 22, 2022 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP

package on March 22, 2022. I find that the Landlord was served with the NoDRP package for this hearing on March 22, 2022, in accordance with Section 89(1)(a) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Are the Tenants 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 parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2021. The fixed term ended on April 30, 2022. Monthly rent was \$2,250.00 payable on the first day of each month, plus 50% of the utilities bills. A security deposit of \$1,125.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenants vacated the rental unit on April 30, 2022.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$2,250.00 in outstanding rent on March 1, 2022. The effective date of the 10 Day Notice was March 25, 2022.

The parties in this matter were victims of cybercrime, and the Tenants' March rent payment was misdirected away from the Landlord. The Tenants opened a bank claim to resolve this etransfer misdirection. By March 18, 2022, the bank's investigation was completed and \$2,250.00 was credited back to one Tenant's bank account.

Because this RTB claim had been opened, the Tenants held onto the \$2,250.00 that was recouped from the bank investigation rather than paying the Landlord March's rent.

The Landlord is seeking a Monetary Order for unpaid rent in the amount of \$2,250.00.

## 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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

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].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) pay the overdue rent, in which case the notice has no effect, or*
  - (b) dispute the notice by making an application for dispute resolution.*
- ...

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution after receiving the 10 Day Notice, but testified that they were holding onto the March rent money they recouped from the bank until after this hearing. The Tenants provided no evidence that they were authorized not to pay the Landlord his owed rent. The Tenants owed the Landlord for March's rent, and I dismiss their application to cancel the Landlord's 10 Day Notice without leave to re-apply.

I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

- 55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

The Tenants vacated the rental unit on April 30, 2022, so the Landlord does not require an Order of Possession. I previously found that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act, and I have dismissed the Tenants' application. The Landlord is entitled to a Monetary Order to recover the outstanding rent amount not paid to him pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$2,250.00. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$2,250.00
Less security deposit:	-\$1,125.00
TOTAL OWING:	\$1,125.00

As the Tenants are not successful in their claim, I do not grant them recovery of the application filing fee.

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$1,125.00. 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: June 03, 2022

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Residential Tenancy Branch