



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONEHAUS REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Parties	File No.	Codes:
(Tenant) A.J. D.M.	310066588	CNR-MT
(Landlord) J.C., Agent C.C., Agent P.S., Owner	310066835	OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants filed claims for:

- more time to apply to cancel the notice; and
- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 6, 2022 ("10 Day Notice").

The Landlord filed claims for:

- an order of possession for unpaid rent, further to having served the Tenants with the 10 Day Notice;
- a monetary order of \$2,295.00 for outstanding unpaid rent from the Tenant; and
- recovery of their \$100.00 application filing fee.

The Owner, P.S. (“Owner”) and two agents for the Landlord, C.C. and J.C. (“Agents”), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents and the Owner, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Owner and the Agents.

I explained the hearing process to the Agents and Owner and gave them an opportunity to ask questions about it. During the hearing the Agents and Owner were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants, as an Applicant, were provided with a copy of the Notice of a Dispute Resolution Hearing on March 24, 2022; however, the Tenants did not attend the teleconference hearing scheduled for July 8, 2022, at 1:30 a.m. (Pacific Time). The phone line remained open for 19 minutes and was monitored throughout this time.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Cross-Applicant/Respondent Landlord’s Agents and the Owner and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on July 8, 2022, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for 19 minutes; however, neither the Tenants nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenants’ application without leave to reapply**.

The Landlord, as a cross-applicant, provided evidence to establish that they served the Tenant with their Notice of Hearing documents and evidence via registered mail sent on March 24, 2022. The Agents provided Canada Post registered mail tracking numbers as proof of service. Based on the evidence before me, I find that the Tenants were deemed

served with the Landlord's Notice of Hearing documents and evidence pursuant to the Act.

### Preliminary and Procedural Matters

The Parties provided their respective email addresses in their Applications, and the Agents confirmed their address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agents that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Agents had submitted a copy of the Parties' tenancy agreement, and in the hearing, they confirmed that the fixed-term tenancy began on February 1, 2022, and was to run to January 31, 2023, and then operate on a month-to-month basis. They confirmed that the Tenants are required by the tenancy agreement to pay the Landlord a monthly rent

of \$2,295.00, due on the first day of each month. The Agents confirmed that the Tenants paid the Landlord a security deposit of \$1,147.50, and no pet damage deposit. The Agents confirmed that the Landlord still holds the security deposit in full.

The Parties submitted copies of the 10 Day Notice, and in the hearing, the Agents confirmed the following details. The 10 Day Notice was signed and dated March 6, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door on March 6, 2022, with an effective vacancy date of March 16, 2022, which is automatically corrected by section 53 of the Act to March 19, 2022. The 10 Day Notice was served on the grounds that the Tenants failed to pay \$2,295.00 when it was due on March 1, 2022. The Agents advised that the Tenants have failed to pay any rent since February 2022, and that they. Therefore, currently owe the Landlord five months' rent for a total of \$11,475.00.

### Analysis

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of 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.

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The Tenants applied for dispute resolution, but they did not attend the hearing to pursue their claim against the Landlord's evidence and application.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenants were properly served with the 10 Day Notice on March 9, three days after it was posted on the rental unit door.

Section 26 of the Act states that a tenant must pay 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 the Act to deduct all or a portion of the rent. In the hearing, the Agents said that the Landlord was owed \$11,475.00 in unpaid rent as of July 1, 2022.

I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenants did not attend the hearing to provide testimony as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$11,475.00 in rent owed for March through July 2022. As such, **the Tenants' Application** to cancel the 10 Day Notice is **dismissed without leave to reapply**.

Further, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenants have not paid rent for the last five months, the **Order of Possession will be effective two days after service** of the Order on the Tenants pursuant to section 55 of the Act.

The Landlord is also awarded **\$11,475.00** for unpaid rent arrears owing, pursuant to section 67 of the Act. Given the Landlord's success, I also award the Landlord with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' security deposit of \$1,147.50 in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenants' **\$1,147.50** security deposit.

After deducting the security deposit from the total now owing, I grant the Landlord a **Monetary Order** from the Tenants of **\$10,427.50**, pursuant to section 67 of the Act.

### Conclusion

The Tenants have not paid rent for the last five months and they did not attend the teleconference hearing; therefore, the **Tenants' application** is **dismissed without leave to reapply**.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession effective two days after service of this order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this order as soon as possible. Should the Tenants fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain the Tenants' security deposit of \$1,147.50 pursuant to section 72 of the Act in partial satisfaction of their \$11,575.00 awards, which includes rent arrears and recovery of the Landlord's **\$100.00** Application filing fee from the Tenants.

Pursuant to sections 26, 46 and 67 of the Act, I grant the Landlord a **Monetary Order of \$10,427.50**,

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 08, 2022

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Residential Tenancy Branch