



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File #910070608: FFT, CNR, OLC, MNDCT, RR, CNC, OT  
File #310076489: OPR-DR

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- Orders pursuant to s. 46 cancelling various 10-day notices to end tenancy;
- An order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on June 5, 2022 (the “One-Month Notice”);
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order pursuant to s. 65 for a rent reduction;
- A monetary order pursuant to s. 67 for compensation;
- Other relief under the *Act*; and
- Return of their filing fee pursuant to s. 72.

The Landlords filed their own application in which they seek an order of possession pursuant to s. 55 of the *Act* after issuing a 10-day notice to end tenancy. The Landlord’s application was originally filed as a direct request but was adjourned to a participatory hearing due to the Tenants’ application.

L.M. and J.M. appeared as the Tenants. B.T. and T.T. appeared as the Landlords. The Landlords were joined by T.D., who acted as a translator and agent for the Landlords. T.D. certified she was capable of translating Vietnamese to English and vice versa on behalf of the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing.

The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants advise having served their application, amendments, and evidence on the Landlords. The Landlords acknowledge receipt of the Tenants application materials. I find that pursuant to s. 71(2) of the *Act* that the Landlords were sufficiently served on the Tenants' application materials.

The Landlords advised that they served their application and evidence on the Tenant. The Tenants acknowledged receipt of the Landlords application, but deny receipt of a portion of the Landlords' evidence. Upon review of the materials, the Tenants confirmed that the Landlord's application materials included the various notices to end tenancy that were in dispute. The Landlords testified that their application materials were personally served, though changed their evidence stating it had been posted to the door. The Landlords provided unclear evidence on whether all of the evidence provided to the Residential Tenancy Branch had been served on the Tenants.

The Landlords bear the burden of proving service of their application materials. I find that they have provided unclear and at times contradictory evidence with respect to service of their application materials. Accordingly, I find that only the notices and the Notice of Dispute Resolution were served on the Tenants based on their acknowledged receipt. As the Landlords have failed to demonstrate service of the other evidence they provided to the Residential Tenancy Branch, it is not included and shall not be considered by me.

#### Preliminary Issue – Tenants' Claims

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The primary issue with respect to this matter is whether the tenancy will continue or end based on the notices to end tenancy before me, all of which centre on a rent dispute. I find that the other aspects of the Tenants' claims are not sufficiently related to this issue

and, in the case of the claim under s. 62 and future rent reduction under s. 65, are subsidiary to the primary issue.

Pursuant to Rule 2.3, I sever the Tenants' claims under ss. 62, 65, 67, and for other relief. The hearing proceeded strictly on the basis of the enforceability of the notices to end tenancy.

#### Issues to be Decided

- 1) Should the 10-day notices to end tenancy be cancelled?
- 2) Should the One-Month Notice be cancelled?
- 3) If not, are the Landlords entitled to an order of possession?
- 4) Are the Landlords entitled to an order for unpaid rent?
- 5) Are the Tenants entitled to the return of their filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on September 1, 2019.
- Rent is to be paid on the first day of each month.
- The Tenants paid a security deposit of \$900.00 to the Landlords.

The parties dispute the amount of rent that ought to be payable under the tenancy agreement. I was advised by the Tenants that there was no written tenancy agreement, though I was provided with a copy of the Tenants' application for the rental unit, which specifies rent was to be paid in the amount of \$1,340.00.

The Landlords provided unclear and contradictory evidence on what rent should be paid under the tenancy agreement. Based on the amounts listed in the 10-day notices to end tenancy, it appears that the Landlords' position is that rent ought to be paid in the amount of \$1,370.00, though this does not appear to be consistent across the various 10-day notices.

The Tenants testified that rent had been set at \$1,340.00. They further testified that the rent for the rental unit had been advertised as \$1,300.00 but that the Tenants agreed to pay an additional \$40.00 per month to access laundry facilities.

The Tenants further testified that some two months into the tenancy, rent had increased to \$1,370.00. The Landlords testified that the Tenants wanted new appliances in the kitchen. The Tenants testified that the fridge was non-functional, and the stove did not function properly. The Tenants testified that they agreed to the additional \$30.00 per month which had been requested by the Landlords so that they could have functioning appliances. However, the Tenants emphasized that they felt they had no choice but to agree to the increase so that they could have a fridge that was functional.

The Tenants testified that they paid rent of \$1,370.00 from the fall of 2019 until January 1, 2022. The Tenants testified that the issue of the \$30.00 increase from the fall of 2019 came into dispute as the Tenants insisted that the increaser was improper. The Landlords testified that the Tenants paid \$1,340.00 in March 2022. The Tenants testified to paying \$1,340.00 in February 2022 and March 2022.

The Tenants testified to receiving a notice of rent increase on their doorstep on February 3, 2022, a copy of which is included in their evidence. The rent increase is purported to have been signed on September 1, 2021 and a rent increase of \$20.00 was to take effect on January 1, 2022. The Tenants argue that the Landlords intentionally misdated the notice and served it after the dispute arose with respect to rent. The Landlords provided no submissions with respect to the purported rent increase.

The parties evidence includes a 10-Day Notice to End Tenancy signed on March 7, 2022. The Landlords advise it had been served on the Tenants. The Tenants confirmed receiving it, though could not recall the date they received it. The 10-Day Notice from March 2022 lists that the Tenants failed to pay \$1,370.00 on March 1, 2022.

The Tenants evidence includes a handwritten note dated March 14, 2022. The note indicates that the Landlords would withdraw the 10-Day Notice from March 2022 and the Tenants would agree to pay rent of \$1,360.10 prospectively. The parties all confirmed signing the note. The Landlords acknowledged the note in response to the Tenants evidence and failed to mention it in their initial submissions.

The parties confirmed that rent was paid by the Tenants in the amount of \$1,360.10 in April 2022.

The Landlords issued a 10-Day Notice to End Tenancy signed on April 5, 2022, which they indicate was served on the Tenants on April 11, 2022. The Tenants acknowledge receiving the April 10-Day Notice, though could not recall when they received it. However, their application specifies that they had received the April 10-Day Notice on April 11, 2022. The April 10-Day Notice lists that the Tenants failed to pay rent of \$1,370.00 on April 1, 2022.

I was advised by the Tenants that their laundry machines quit working in April 2022 and that the Landlords agreed that the Tenants could withhold \$40.00 from rent as this was the additional amount that they had agreed to pay at the outset of the tenancy for laundry. The Tenants directed me to a text message dated April 29, 2022 which they say they received from the Landlords, which states:

...May and onwards we will deduct \$40 from your usual rent since we won't be covering the laundry and dryer anymore.

The Landlords confirm sending the text message of April 29, 2022. Again, the Landlords failed to mention this text message in their initial submission.

The parties confirmed that the Tenants paid \$1,089.50 for June 2022. The Tenants advise that they discovered the security deposit paid at the outset of the tenancy exceeded the amount permitted by the *Act* and deducted \$350.00 from the rent that was payable on the June 1, 2022.

A final 10-Day Notice signed on July 16, 2022 was served on the Tenants. The Landlords advise it was served and the Tenants acknowledge receiving the July 10-Day Notice on July 22, 2022. The July 10-Day Notice indicates that the Tenants failed to pay \$1,320.10 on July 1, 2022. The parties confirmed in their respective evidence that the Tenants paid \$1,319.50 in rent for July 2022.

The parties further confirmed that the Tenants paid rent of \$1,320.10 in August 2022.

The parties evidence includes the One-Month Notice, which the Landlords indicate was served on the Tenants. The Tenants acknowledge receiving the One-Month Notice on

June 10, 2022. The One-Month Notice was issued on the basis of repeated late rent payments.

The Landlords provided no direct submissions on the enforceability of the One-Month Notice other than as confirmed with respect to the rent payment history they testified to at the hearing. The Tenants indicate that they pay rent on the first and that there have been instances in which the Landlords have turned them away from their door when they have attempted to pay rent on the 1<sup>st</sup>.

The Tenants confirmed they continue to reside within the rental unit.

### Analysis

The Tenants seek orders cancelling various 10-Day Notices and the One-Month Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either repay the overdue rent or file an application to dispute the notice. This is made clear at the very top of the 10-day notice to end tenancy, which states:

#### **HOW TO DISPUTE THIS NOTICE**

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Looking at the 10-Day Notices in chronological order, I find that the 10-Day Notice signed March 7, 2022 is of no force or effect based on the parties agreement signed to that effect on March 14, 2022. The Tenants and the Landlords confirmed signing the agreement.

The Landlords testified that the April 10-Day Notice was served on the Tenants on April 11, 2022, though they did not specify how it was served. The Tenants acknowledge

receipt of the April 10-Day Notice, though at the hearing, they testified that they could not recall the specific date they received the notice. The Tenants application was initiated, at least in part, to their receipt of the April 10-Day Notice. The Tenant's application, which they filled out themselves, states they received the April 10-Day Notice on April 11, 2022 by registered mail.

I find that the April 10-Day Notice was received by the Tenants on April 11, 2022. This is confirmed by the Tenants application, which they filled-out themselves, and by the Landlord's submissions. Accordingly, they had until April 16, 2022 to either pay the overdue rent or file an application disputing the notice.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application disputing the April 10-Day Notice on April 20, 2022, which is when the Residential Tenancy Branch received the application and the filing fee. I find that the Tenants failed to file their dispute with the Residential Tenancy Branch within the 5 days permitted to them under s. 46(4) of the *Act*.

Given that the Tenants failed to file in time, I find that s. 46(5) of the *Act* comes into effect and the Tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is April 21, 2022, which is the date corrected automatically by application of s. 53 of the *Act*.

As the Tenants are conclusively presumed to have accepted the end of the tenancy, I dismiss their application to cancel the 10-Day Notice signed on April 5, 2022.

I have reviewed the April 10-Day Notice and find that it complies with the formal requirements defined by s. 52 of the *Act*. The Tenants evidence includes notations on the April 10-Day Notice that indicates that the Landlords failed to check off that the notice was issued under s. 46 of the *Act*. I find that that is not relevant to the form or content of the April 10-Day Notice. It is clear on its face what grounds the April 10-Day Notice was issued.

I find that the Landlords are entitled to an order of possession under s. 55 of the *Act*. Given this, I do not consider the other aspects of the Tenants' application. The tenancy is over.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent.

I was provided with contradictory and misleading evidence by the Landlords with respect to the rent obligations the Tenants were to pay. In one instance they claimed rent ought to have been paid in the amount of \$1,370.00, though this is contradicted by their later admission that they entered into two separate agreements in the spring of 2022 with respect to the Tenants' rent obligations. I am unable to find what, if any, rent is owed by the Tenants. Accordingly, I make no order with respect to unpaid rent.

### Conclusion

I dismiss the Tenants application to cancel the April 10-Day Notice as they failed to file an application disputing the 10-Day Notice within the 5 days permitted to them under s. 46(4) of the *Act*. The Tenants are conclusively presumed to have accepted the end of the tenancy as per s. 46(5) of the *Act*.

I make no findings with respect to the other notices to end tenancy in dispute.

The Landlords are entitled to an order of possession pursuant to s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

I am unable to make findings on what amount of rent, if any, was unpaid by the Tenants. I make no order for unpaid rent under s. 55(1.1) of the *Act*.

As the tenancy is over, the Tenants' claim under s. 62 that the Landlords comply that was severed at the outset of the hearing is dismissed without leave to reapply. Similarly, the Tenants claim for future rent reduction under s. 65 is dismissed without leave to reapply as it is no longer relevant. However, the Tenants claims for past rent reduction under s. 65 and their monetary claim under s. 67 are dismissed with leave to reapply.

The Tenants were unsuccessful in their application. I find that they are not entitled to the return of their filing fee. Their claim under s. 72 for the return of the filing fee is dismissed without leave to reapply.



It is the Landlords obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlords with the Supreme 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 *Residential Tenancy Act*.

Dated: August 20, 2022

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Residential Tenancy Branch