



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Tenant) M.V.	110071758	CNR
(Landlord) H.R.	110072748	MNR-DR, OPR-DR., FFL

### Introduction

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

The Tenants filed a claim for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2022 (“10 Day Notice”).

The Landlords filed claims for:

- an Order of Possession for unpaid rent, further to having served the 10 Day Notice;
- a Monetary Order for unpaid rent of \$1,926.00, further to having served the 10 Day Notice;
- a Monetary Order for landscaping costs incurred; and
- recovery of the \$100.00 application filing fee.

The Landlords and an agent for the Landlords, C.M. (the “Agent”), appeared at the teleconference hearing and gave affirmed testimony. However, no one attended on behalf of the Tenants. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the

hearing were the Landlords and their Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me were the Landlords and their Agent.

I explained the hearing process to the Landlords and Agent and gave them an opportunity to ask questions about it. During the hearing the Landlords 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 were provided with a copy of the Notice of a Dispute Resolution Hearing for their application by the RTB on May 17, 2022; however, the Tenants did not attend the teleconference hearing scheduled for September 12, 2022, at 11:00 a.m. (Pacific Time). The phone line remained open for 33 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords and the Agent, who indicated that they were ready to proceed.

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 33 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**.

In addition to the Tenants’ application, the Landlords applied for an order of possession and compensation related to the tenancy, which claims we reviewed in the hearing in the Tenants’ absence.

I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications, and the Landlords confirmed these email addresses 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 Landlords that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### 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 Landlords confirmed in the hearing that the Parties' fixed-term tenancy began on April 1, 2018, and ran to March 31, 2019, and then operated on a month-to-month basis. The Landlords said the tenancy agreement required the Tenants to pay the Landlords a monthly rent of \$1,850.00, due on the first day of each month. The Agent said the Tenants paid the Landlords a security deposit of \$925.00, and a pet damage deposit of \$925.00, and that the Landlords still hold these deposits in trust.

#### *Rent Owning & Order of Possession*

The Landlords submitted a copy of the 10 Day Notice, which was signed and dated May 2, 2022, and which has the rental unit address. The 10 Day Notice was served in person on May 2, 2022, with an effective vacancy date of May 12, 2022, and it was served on the grounds that the Tenants failed to pay \$1,926.00 in rent that was due on May 1, 2022.

The Agent said that the Tenants moved out, but did not give back any keys. She said she did not know when they moved out, but the Landlords are claiming rent to September 1, 2022. The Landlords said the Tenant has not paid any rent from May through September 2022. She says, therefore, they owe the Landlords \$9,630.00 in outstanding rent for this period.

<b>Date Rent Due</b>	<b>Amount Owning</b>	<b>Amount Received</b>	<b>Amount Owning</b>
May 1, 2022	\$1,926.00	\$0.00	\$1,926.00
June 1, 2022	\$1,926.00	\$0.00	\$1,926.00

July 1, 2022	\$1,926.00	\$0.00	\$1,926.00
Aug. 1, 2022	\$1,926.00	\$0.00	\$1,926.00
Sep. 1, 2022	\$1,926.00	\$0.00	\$1,926.00
	<b>TOTAL</b>		<b>\$9,630.00</b>

The Landlords said they are still looking for an Order of Possession, because the Tenants did not give the keys back to the residential property.

### Landscaping Costs

The Agent said that the tenancy agreement required the Tenant to do yard work, including mowing the lawn. Clause 16 of the tenancy agreement states:

16. LANDSCAPING: Tenants are responsible to keep the landscaping of the premises in good condition. This would include maintaining all lawn areas with regular mowing, weeding of garden beds (where applicable), regular watering of lawns and garden beds during summer months, and any other reasonable grounds maintenance as deemed necessary by the Landlord during the period of the lease agreement. Tenants are responsible to ensure that all exterior hoses are removed, and the water supply to any exterior hose bibs is turned off, during the period of October 31<sup>st</sup> to March 31<sup>st</sup>.

The Agent said: "He also owes for yard work that he was refusing to do. The neighbours complained to the bylaw officer. I had to have a lawn service company do the work."

The Landlord submitted a copy of the invoice from the lawn service company, as well as the letter from the town's bylaw officer. The letter from the Town about the "Unsightly Property" at the rental unit address. This letter includes:

The occupier/tenant of your property was advised of the complaint(s) and interviewed on May 25/22. He was informed of his responsibility regarding the above noted Bylaw and was given 7 days from that visit to have the lawn mowed by June 1/22. He agreed to those terms, however, as of the date of this letter the lawn has not been cut and we have received another complaint about your property.

...

Further enforcement action may result in a \$200 fine that can be levied for each

day the offence continues. Also please note that there are provisions within the bylaw that the Town can have your property cleaned up and assign the cost of the work to your future property taxes.

...

I asked the Agent how much it cost to have the lawn service company clean up the property, such as the Tenant was supposed to have done. The Agent said it cost the Landlord \$346.50 up to the date of billing – August 8, 2022. She said: “They were hired to do the maintenance until he moved out. They were charging \$50.00 when going there every two weeks.”

The Landlords submitted an invoice from the landscaping services company they hired to do the Tenants’ yard maintenance chores set out in the tenancy agreement. The invoice is as follows:

	[Vendor’s name and address]	
	[Landlords] [Address residential property]	Aug 15 <sup>th</sup> 2022
<b>DATE</b>	<b>DESCRIPTION</b>	<b>BALANCE</b>
6/15	Mowed & Trimmed, Tidy Cutting Grass 1 <sup>st</sup> cut 2022	130
6/28	Mowed & Trim	50
7/12	Mowed & Trim	50
7/25	Mowed & Trim	50
8/8	Mowed & Trim	50
	<b>Sub-total</b>	330
		16.50
	<b>TOTAL</b>	<b>\$346.50</b>
[8/22]	[Add’l mowing & trim to Sep 1 <sup>st</sup> including tax]	<b>\$ 52.50</b>
	[Total to August 31/22]	<b>[\$399.00]</b>

The Landlords seek compensation for up to the time they discovered that the Tenants has abandoned the property – essentially, to the end of August 2022.

## Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

### *Rent Owning & Order of Possession*

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent, Section 46 of the Act 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

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 in person on May 2, 2022.

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, regulation, 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 Landlords said that they were owed \$9,630.00 in unpaid rent as of September 1, 2022.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$1,926.00 is incorrect, as it was based on outstanding rent amount for May 2022. However, since the Tenants continued to live in the residential property without paying any rent, I find that the Tenants should have expected that the Landlord would claim for the rent the Tenants know they have not paid. As such, it is reasonable to find that the Tenants owe the Landlords rent to the point at which the Landlords discovered the residential property abandoned by the Tenants.

The 10 Day Notice was signed, dated, it had the rental unit address and the effective vacancy date of May 12, 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 \$1,926.00 in rent owed on

May 1, 2022. Therefore, the Tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply.

As a result, I find that the Landlords are entitled to an Order of Possession, and pursuant to section 55 of the Act, I award the Landlords with an Order of Possession. 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 between May through September 2022, the **Order of Possession** will be **effective two days after service** of the Order on the Tenants.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content, and note that the Tenants' application has been dismissed. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenants' application, as well as their own.

Based on the evidence before me in this matter, I find that the Tenants owe the Landlords \$9,630.00 in unpaid rent, and I award the Landlords recovery of **\$9,630.00** from the Tenants pursuant to section 67 of the Act.

#### Landscaping Costs

Based on the evidence before me, I find that the Tenants were responsible for mowing and tidying the yard, pursuant to clause 16 of the tenancy agreement. The Landlords are claiming yard maintenance costs to the time that they discovered the Tenants had abandoned the premises or on or about August 31, 2022. I find that the yard services company invoice indicated that the company charged the Landlords \$50.00 for a yard work session every two weeks. I find that there was one more session due to be completed in August 2022, further to the last billing from the yard services company. I find that the Tenants could have anticipated they would be charged for yard maintenance up to the end of the tenancy. As such, I award the Landlords with **\$399.00**

from the Tenants for lawn maintenance, pursuant to sections 62 and 67 of the Act.

### Summary and Offset

The Tenants' application is dismissed without leave to reapply, as the Tenants failed to attend the hearing to present the merits of their case. The Landlords attended the hearing and provided sufficient evidence to establish that they are entitled to an Order of Possession for the residential property. The Landlords are awarded an **Order of Possession, effective two days after it is served** to the Tenants, pursuant to section 55 of the Act.

The Landlords have provided sufficient evidence to meet their burden of proof on a balance of probabilities to establish monetary awards for this tenancy. The Landlords proved on a balance of probabilities that the Tenants owe them **\$9,630.00** in unpaid rent and **\$399.00** in landscaping maintenance costs for a total award of **\$10,029.00**.

The Landlords are authorized by section 72 of the Act to retain the Tenants' **\$925.00** security deposit and their **\$925.00** pet damage deposit pursuant to section 72 of the Act, in partial satisfaction of the Landlords' monetary awards. As a result, I grant the Landlords a **Monetary Order** of **\$8,179.00** from the Tenants for the remaining rent arrears and landscaping fees owing, pursuant to section 67 of the Act.

### Conclusion

The Tenants' application is dismissed without leave to reapply, as they failed to attend the hearing to present the merits of their application. The Landlords are successful in their claims, as they provided sufficient evidence to meet their burdens of proof on a balance of probabilities.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlords effective **two days after service of this Order** on the Tenants. The Landlords are 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, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords established monetary awards of **\$10,029.00**. I authorize the Landlords to retain the Tenants' full security and pet damage deposits of a combined **\$1,850.00** in partial satisfaction of the monetary awards. The Landlords are granted a **Monetary**



**Order** under section 67 for the balance due by the Tenants to the Landlords of **\$8,179.00**.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: September 14, 2022

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Residential Tenancy Branch