



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, MNDCL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 12, 2022 ("10 Day Notice"); for a monetary order for unpaid rent of \$4,050.00; and to recover the \$100.00 cost of their Application filing fee.

The Landlord and two agents for the Landlord, S.M. and M.M. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and her Agents, 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, was the .

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her 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.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they served each of the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on June 12, 2021. The Agents provided Canada Post tracking numbers as evidence of service. After checking the registered mail tracking numbers in the Canada Post website, I find that the Tenants

failed to pick up the packages at the post office. Based on the evidence before me overall in this matter, I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

#### Preliminary and Procedural Matters

The Landlord provided her email address in the Application, but in the hearing, she confirmed that I should email the Decision to her Agents, who provided their email address on request. The Landlord did not have an email address for the Tenants; therefore, I will mail the Decision to the Tenants at the residential property. The Landlord confirmed her understanding that the Decision would be emailed to her and mailed to the Tenants, and that any Orders would be sent to the appropriate Party in this manner

The Landlord had applied for compensation for unpaid rent up to September 1, 2022; however, in the hearing, she said the Tenants failed to pay their rent owing in October 2022, as well.

The Landlord initially applied for compensation of \$450.00, which was the amount owing at the time the Landlord applied for dispute resolution. Further, the Landlord stated that the amount owing is now up to \$4,950.00, as the Tenants have not paid any rent May 2022. The Landlord requested that her Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenants to pay their monthly rent owing. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after updating the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenants from \$450.00 to \$4,950.00.

At the outset of the hearing, I advised the Parties 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

- 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 Landlord confirmed that the periodic tenancy began on July 1, 2019, with a monthly rent of \$900.00, due on the first day of each month. The Landlord said that the Tenants never paid the Landlord a security deposit, nor a pet damage deposit.

The Landlord submitted a copy of the 10 Day Notice she served to the Tenants, which was signed and dated May 12, 2022, and which has the rental unit address. The 10 Day Notice was served by attaching a copy to the door on May 12, 2022, with an effective vacancy date of May 22, 2022, which is automatically corrected by the Act to May 25, 2022. The 10 Day Notice was served on the grounds that the Tenants failed to pay the Landlord \$450.00 in rent when it was due on May 1, 2022.

The Landlord said that the Tenants have continued to fail to pay any rent since the 10 Day Notice was served. The Landlord said the Tenants now owe her \$4,950.00 in unpaid rent. The Landlord submitted a statement of account into evidence that tracks the Tenants' rent payments from November 12, 2021, through May 1, 2022, and a second statement of account tracking the Tenants' rent payments from November 12, 2022, through September 1, 2022. This second statement shows that as of September 1, 2022, the Tenants owed the Landlord \$4,050.00 in unpaid rent. The Landlord confirmed that as of October 1, 2022, the Tenants' debt to the Landlord grew to \$4,950.00.

The Agents testified in the hearing that they served the Tenant with a copy of this second statement of their account on September 12, 2022; however, as noted above, the Tenants know how much rent they have and have not paid, and so, they will not be surprised by the amount claimed by the Landlord.

The Tenants did not dispute the 10 Day Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

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.

. . .

(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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

The Tenants did not pay anything toward the rent owing after they received the 10 Day Notice, and further, they did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46 (5) of the Act, the Tenants are conclusively presumed to have accepted that the Tenancy ended on the effective date of the notice, and must vacate the rental unit by that date. I find that the Tenants are overholding in the rental unit.

I reviewed all relevant documentary evidence and testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenants were deemed served with the 10 Day Notice on May 15, 2022, 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 Landlord said that she was owed \$4,950.00 in unpaid rent from the Tenants as of October 1, 2022.

Based on the evidence before me, the Landlord is successful in her Application, as I find that the Tenants breached sections 26 of the Act by not paying the rent owing to the Landlord in full, from November 2021 through to the date of the hearing. I, therefore, **award the Landlord with \$4,950.00** in unpaid rent from the Tenants, pursuant to section 67 of the Act. I also award the Landlord recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act. I grant the Landlord a **Monetary Order** from the Tenants of **\$5,050.00**.

The Tenants did not attend the hearing to testify as to why the rent was not paid. They did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the rent owing. Further, the Tenants did not apply for dispute resolution to request cancelling the 10 Day Notice.

Therefore, the Landlord's Application for an Order of Possession is granted, 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 full rent owing in a year, the **Order of Possession will be effective two days after service** of the Order on the Tenants.

### Conclusion

The Landlord is successful in her Application. The Tenants have not paid rent in full for more than the last 11 months, so the Landlord's Application for an Order of Possession is granted.

**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.

I have found that the Tenants owe outstanding rent of \$4,950.00, and therefore, the Landlord is awarded this amount. Further, the Landlord is awarded recovery of the \$100.00 filing fee for this Application from the Tenants. I grant the Landlord a **Monetary Order** of **\$5,050.00** from the Tenants pursuant to section 67 of the Act.

This Order must be served on the Tenant by the Landlord 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: October 07, 2022

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Residential Tenancy Branch