



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IHM 2400 MOTOR COURT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord:    OPR-DR, MNR-DR, FFL  
                                 Tenants:    CNR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on September 26, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession for unpaid rent or utilities based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 30, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants' Application for Dispute Resolution was made on June 30, 2022. The Tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 29, 2022, pursuant to the Act.

The Landlord was represented at the hearing by RM and KM, agents. The Tenants were represented at the hearing by JB. All in attendance provided affirmed testimony.

On behalf of the Landlord, RM testified the Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail. JB acknowledged receipt on behalf of the Tenants. No issues were raised with respect to service or receipt of these documents. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

On behalf of the Tenants, JB testified the Tenants' Notice of Dispute Resolution Proceeding package was served on the Landlord by leaving a copy at the Landlord's office. Both RM and KM denied receipt of these documents and the Tenants did not submit documentary evidence in support of service. Accordingly, I find I am not satisfied the Landlord was made aware of the Tenants' application. I find that the Tenants' application is dismissed without leave to reapply. Nevertheless, both RM and KM were prepared to proceed with the hearing and both applications address the same issues. Therefore, I find it is appropriate to proceed with the application.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The parties agreed the Tenants have occupied a motel room with kitchen facilities since January 15, 2021. The Tenants pay a monthly rate of \$2,090.00 which is due on the 28<sup>th</sup> day of each month for the following one-month period, plus a monthly "pet fee" of \$131.25. The parties agreed the Tenants paid a security deposit of \$200.00.

On behalf of the Landlord, RM testified the Tenants did not pay rent when due on August 28, 2022. Accordingly, the Landlord issued the Landlord's 10 Day Notice. At that time, rent of \$2,090.00 and pet fees of \$262.50 remained unpaid (\$2,352.50). A copy of the 10 Day Notice was submitted into evidence. It is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The Landlord testified the 10 Day Notice was served on the Tenants by giving a copy to SB on August 30, 2022. The Landlord submitted a Proof of Service Notice to End Tenancy document signed by SB. On behalf of the Landlord, RM testified the Tenants paid \$1,000.00 on September 28, 2022, but have not received any further payments.

In reply, JB acknowledged that the Landlord's evidence is correct, and that rent has not been paid when due. However, JB testified that they have tried to resolve the issue with the Landlord but have been unable to do so. JB also referred to issued with receipt of benefits from the federal government.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms:

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 confirms a landlord may take steps to 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.

In this case, I find that the Landlord's 10 Day Notice was served on and received by the Tenants on August 30, 2022. Further, I find the Tenants did not dispute the 10 Day Notice or pay rent in full within five days after receipt in accordance with section 46(4) of the Act. Therefore, pursuant to section 46(5) of the Act, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenants.

In addition, based on the evidence of the parties, I find the Landlord has established an entitlement to a monetary award for unpaid rent of \$5,270.00, which has been calculated as follows:

<b>Rent due date</b>	<b>Rent due</b>	<b>Rent received</b>	<b>Rent unpaid</b>
Aug. 28/22	\$2,090.00	\$0	\$2,090.00
Sept. 28/22	\$2,090.00	\$1,000.00	\$1,090.00
Oct. 28/22	\$2,090.00	\$0	\$2,090.00
<b>TOTAL:</b>	<b>\$6,270.00</b>	<b>\$1,000.00</b>	<b>\$5,270.00</b>

Pet fees are not rent and have not been included in this calculation.

Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee paid to make the application. Therefore, I find the Landlord is entitled to a monetary order of \$5,370.00, which is comprised of \$5,270.00 in unpaid rent and \$100.00 in recovery of the filing fee.

### Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$5,370.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' application is dismissed without leave to reapply.

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: November 18, 2022

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Residential Tenancy Branch