



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code            CNR, CNC, FFT

### Introduction

This hearing was convened as a result of two Applications for Dispute Resolution made by the Tenants on July 6 and July 14, 2022.

In the application made on July 6, 2022, the Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2022 (the 10 Day Notice); and
- an order granting recovery of the filing fee.

In the application made on July 14, 2022, the Tenants applied for the following relief, pursuant to the Act:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and
- an order cancelling a One Month Notice to End Tenancy for Cause dated July 12, 2022 (the One Month Notice).

The Tenants were represented at the hearing by CD. The Landlord attended the hearing and was represented by PO, legal counsel. The evidence of PG, a witness for the Landlord, was not required. All those giving testimony provided a solemn affirmation.

On behalf of the Tenants, CD testified the Notice of Dispute Resolution Proceeding package related to the first application was served on the Landlord by email. CD also testified that the Notice of Dispute Resolution Proceeding package related to the second application was served on the Landlord by email. On behalf of the Landlord, PO advised that only of the package relating to the second application was received and that it was not accompanied by documentary evidence. As the second application is an extension of the first, I find the Landlord was made aware of the hearing and find it appropriate to proceed.

The Landlord testified that documentary evidence upon which he intends to rely was served on the Tenants in person. CD acknowledged receipt on behalf of the Tenants. I find that these documents are sufficiently served for the purposes of the Act.

The parties were given 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 to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice?
2. Are the Tenants entitled to an order cancelling the One Month Notice?
3. Are the Tenants entitled to recover the filing fee?
4. Is the Landlord entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the Act?
5. Is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?

#### Background and Evidence

The parties agreed the tenancy began on November 1, 2021. Rent of \$5,000.00 per month is due on the first day of each month. The Tenants initially paid a security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00. However, the Tenant testified that the Tenants took possession of a second unit and paid a further security deposit of \$1,000.00. CD testified the Tenants were permitted to rent the second unit but have been unable to do so for the reasons provided in CD's testimony, summarized below.

The Landlord testified the 10 Day Notice was served on the Tenants by posting a copy to the Tenants' door on July 2, 2022. CD confirmed the 10 Day Notice was received within a couple of days after that date.

The 10 Day Notice submitted into evidence 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 10 Day Notice indicates that rent of \$5,000.00 was not paid when due on July 1, 2022. The Landlord testified that the Tenants paid \$2,500.00 on July 12, 2022, but that no further payments have been made. A receipt for the July 12, 2022 payment was submitted in support. The Landlord testified that rent of \$22,500.00 remains unpaid, calculated as follows:

<b>Rent due date</b>	<b>Rent paid</b>	<b>Rent outstanding</b>
Jul. 1, 2022	\$2,500.00	\$2,500.00
Aug. 1, 2022	\$0	\$5,000.00
Sept. 1, 2022	\$0	\$5,000.00
Oct. 1, 2022	\$0	\$5,000.00
Nov. 1, 2022	\$0	\$5,000.00
<b>TOTAL:</b>		<b>\$22,500.00</b>

In reply, CD did not dispute the amount claimed by the Landlord. CD testified that although the second unit was to be rented out by the Tenants, the unit was illegal. However, CD testified that the Tenants were able to rent the second unit for three months, there was inadequate power. No documentary evidence was referred to in support of CD's claims.

PO advised the Landlord not to respond to CD's claims about the second unit.

### Analysis

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

Section 26 of the Act confirms a tenant must pay rent when due 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 permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy. A tenant has five days after receipt of a notice to end tenancy issued under this section to pay rent in full or to dispute the notice. If the tenant fails to pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I find the 10 Day Notice was served on the Tenants by posting a copy to the Tenants' door on July 2, 2022. CD acknowledged receipt a few days after service. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to have been received three days later. Therefore, I find the 10 Day Notice is deemed to have been received by the Tenants on July 5, 2022

Further, I accept the undisputed evidence of the Landlord with respect to unpaid rent. Specifically, I find the Tenants paid \$2,500.00 on July 12, 2022, but that no further payments have been received. I also find there is insufficient evidence before me to conclude the Tenants had a right under the Act to withhold rent.

Considering the above, I find the Tenants' request to cancel the 10 Day notice is dismissed without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. I have found that the Tenants' application to cancel the 10 Day Notice is dismissed. I also find that the 10 Day Notice complies with the form and content requirements of section 52 of the Act. Therefore, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenants.

In addition, section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring payment of the unpaid rent. As I have found that the Tenants' application to cancel the 10 Day Notice is dismissed and that the 10 Day Notice complies with the form and content requirements of the Act, I grant the Landlord a monetary order for unpaid rent in the amount of \$22,500.00.

As the tenancy is ending based on the 10 Day Notice, it has not been necessary for me to consider the merits of the One Month Notice. The Tenants' request to recover the filing fee is also dismissed.

### Conclusion

The Tenants' request for an order cancelling the 10 Day Notice is dismissed without leave to reapply.

By operation of section 55(1) of the Act, 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.

By operation of section 55(1.1) of the Act, the Landlord is granted a monetary order for unpaid rent in the amount of \$22,500.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 25, 2022

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Residential Tenancy Branch