



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR-DR, MNR-DR, FFL  
Tenants: CNR-MT, MNRT, MNDCT, OLC, FFT

### **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 30, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 8, 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 August 23, 2022. The Tenants applied for the following relief, pursuant to the Act:

- an order cancelling the 10 Day Notice;
- an order granting more time to dispute the 10 Day Notice;
- an order that the Tenants be paid back for emergency repairs made during the tenancy;
- an order granting compensation for monetary loss or other money owed;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by SD, legal counsel. SD advised that the Landlord is ill but that an adjournment is not required. The Tenants attended the hearing on their own behalf. The Tenants provided affirmed testimony.

On behalf of the Landlord, SD advised that the Landlord's Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail on October 17, 2022. The Tenants acknowledged receipt. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to have been received five days later. I find these documents are deemed to have been received by the Tenants on October 22, 2022.

The Tenants testified their Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. SD acknowledged receipt of the Tenants' evidence but not of a Notice of Dispute Resolution Proceeding. However, considering my findings with respect to severing portions of the Tenants' application described below, I elected to proceed with both applications as the remaining issues in both applications address the payment of rent when due. Therefore, I find the Landlord was sufficiently served with the Tenants documentary evidence for the purposes of the Act.

The parties were given the 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. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is related to the payment of rent when due. Accordingly, I find it appropriate to exercise my discretion to dismiss all of the Tenants' requests for except for the requests for an order cancelling the 10 Day Notice, for more time to dispute the 10 Day Notice, and to recover the filing fee, with leave to reapply at a later date.

### Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?
4. Are the Tenants entitled to more time to dispute the 10 Day Notice?
5. Are the Tenants entitled to an order cancelling the 10 Day Notice?
6. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The Tenants and SD agreed the tenancy began on October 1, 2021. Rent of \$3,200.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,600.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Landlord, SD confirmed the Landlord issued the 10 Day Notice on August 8, 2022. Despite what is indicated on the 10 Day Notice, SD confirmed that rent of \$16,631.55 remained unpaid at that time, which was described on a Rent Schedule submitted into evidence. A copy of the 10 Day Notice also was submitted into evidence. The 10 Day Notice 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.

On behalf of the Landlord, SD advised that the 10 Day Notice was served on the Tenants by registered mail on August 8, 2022. In support, the Landlord submitted a Proof of Service Notice to End Tenancy document confirming service in this manner. Canada Post registered mail receipts confirming the date and time of purchase and showing the tracking number were also submitted in support. The Tenants acknowledged receipt of the 10 Day Notice.

On behalf of the Landlord, SD advised that the Tenants have also not paid rent when due on September 1, October 1, and November 1, 2022, and that rent of \$26,231.55 remains unpaid.

On behalf of the Landlord, SD submitted that the Tenants have admitted to withholding rent but do not have a right to do so under the Act. SD advised that the Tenants' failure to pay rent when due has caused the Landlord financial stress.

The Tenants acknowledged they did not dispute the 10 Day Notice within five days after receipt and applied for more time to dispute the 10 Day Notice. When asked to provide a reason for the delay, AS testified that the Tenants experienced trauma when assaulted by police on May 13, 2022. The Tenants also testified they were sick with Covid-19 but did not provide a date or documentation in support.

The Tenants did not dispute that rent has not been paid as alleged. However, they testified that on November 29, 2021, they sent the Landlord a message advising that water was leaking through the pot lights. The issue was fixed as of December 11, 2021, but the mold caused by the water has not been addressed to the Tenants' satisfaction. The Tenants testified they have not been able to use their daughter's room for nine months and that the Landlord has stopped communicating with them.

Further, the Tenants testified that on April 11, 2022, the pump for the well broke and the Tenants did not have water. The Tenants testified they had someone attend the rental property to repair the pump at a cost of \$1,378.58 but that they have not paid the invoice. The pump stopped working after three days and they hired a second company to repair the issue at a cost of \$4,537.00, of which the Tenants paid only \$400.00. The water from the well remained dirty for about three weeks and then started to clear up.

### Analysis

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

Section 26(1) of the Act confirms that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation, or the tenancy agreement, unless the tenant has a right under the 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 a notice to end the tenancy. On receipt of a notice to end tenancy under section 46 of the Act, a tenant must pay the overdue rent or dispute the notice by making an application for dispute resolution within five days. Failure to do so results in the conclusive presumption that the tenancy ends on the effective date of the notice and the must vacate the rental unit.

In this case, I find the 10 Day Notice was served on the Tenants by registered mail on August 8, 2022. The Tenants acknowledged receipt. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received five days later. I find the Tenants are deemed to have received the 10 Day Notice on August 13, 2022. As a result, I find the Tenants had until August 18, 2022 to pay the overdue rent or to dispute the 10 Day Notice. The Tenants disputed the 10 Day Notice late on August 23, 2022.

However, section 66 of the Act permits an arbitrator to extend a time limit established by the Act in "exceptional circumstances." Policy Guideline #36 describes exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In this case, I find the Tenants' evidence of an alleged assault by police on May 13, 2022, and of contracting Covid-19 is not very strong and compelling evidence to explain their failure to dispute the 10 Day Notice in August 2022. I was not referred to any documentary evidence of either event in support. Therefore, I decline to grant the Tenants an extension of time to dispute the 10 Day Notice. As a result, pursuant to section 46 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.

With respect to the Landlord's claim for unpaid rent, I accept the Landlord's evidence that rent of \$26,231.55 remains unpaid. Although the Tenants provided testimony relating to a need for repairs during the tenancy, I find there is insufficient evidence before me to conclude the Tenants had a right to withhold rent under the Act. Indeed, it was not disputed that the amount withheld by the Tenants far exceeds the costs of the repairs, which have not been paid by the Tenants in any event. I was not made aware of any application made by the Tenants seeking an order that the Landlord complete repairs. Accordingly, I grant the Landlord a monetary award for unpaid rent of \$26,231.55. As the Landlord has been successful, I also grant \$100.00 in recovery of the filing fee paid to make the Landlord's application.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$26,331.55, which is comprised of \$26,231.55 for 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 \$26,331.55. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' requests for an order cancelling the 10 Day Notice and to recover the filing fee paid to make the Tenants' application are dismissed without leave to reapply. The Tenants remain at liberty to apply for the remainder of the relief sought in their application as appropriate.

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 22, 2022

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Residential Tenancy Branch