



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlords: OPR-DR FFL  
For the tenants: CNR

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlords applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 1, 2022 (10 Day Notice), and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice.

The tenants, a support person for the tenants, RB (support) and the landlords attended the teleconference hearing. The hearing process was explained to the parties and the parties were affirmed. Thereafter the parties gave affirmed testimony, were provided the opportunity to present relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The landlords testified that they were not served with any application from the tenants, which the tenants confirmed during the hearing. As a result, I dismissed the tenants' application without leave to reapply, due to service issue. I have not granted leave to reapply as the timeframe to dispute the 10 Day Notice has long since passed.

The tenants claim they were never served with the Notice of Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence (Hearing Package) from the landlords. As a result, two registered mail tracking numbers were provided by the landlords, which have been included on the cover page of this decision for ease of

reference. According to the Canada Post online registered mail tracking website, both Hearing Packages were mailed on August 5, 2022 and were successfully delivered and signed for on August 15, 2022. The tenants claim the landlords signed for their own package. I will address this issue later in this decision.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party.

### Issues to be Decided

- Should the 10 Day Notice be upheld?
- If yes, are the landlords entitled to an order of possession?
- Are the landlords entitled to unpaid rent?
- Are the landlords entitled to the recovery of the cost of the filing fee?

### Background and Evidence

When asked about a written tenancy agreement, tenant TJ testified that there was no tenancy agreement. TJ then changed her testimony once the tenancy agreement was read during the hearing. A copy of the tenancy agreement was submitted in evidence. The month-to-month tenancy began on September 1, 2020 and the monthly rent of \$1,000 was due on the first day of each month. The tenants paid a security deposit of \$500 at the start of the tenancy.

A copy of the 10 Day Notice was submitted in evidence. The tenants did not deny receiving the 10 Day Notice as they filed an application to dispute it; however, failed to serve that application on the landlords. I will address this matter in more detail later in this decision.

The 10 Day Notice is dated July 1, 2022 and indicates that \$1,500 in rent was owed as of July 1, 2022. The landlords testified that the tenants owe a total of \$6,500 in rent arrears as of the date of the hearing, December 9, 2022 as follows:

<b>MONTH</b>	<b>AMOUNT OF RENT PAID</b>	<b>AMOUNT OF RENT OWING</b>
June 2022	\$500	\$500
July 2022	\$0	\$1,000
August 2022	\$0	\$1,000
September 2022	\$0	\$1,000

October 2022	\$0	\$1,000
November 2022	\$0	\$1,000
December 2022	\$0	\$1,000
<b>TOTAL RENT ARREARS OWING BY TENANTS</b>		<b>\$6,500</b>

The parties confirmed that the tenants continue to occupy the rental unit.

*Landlords' version of events*

The landlords testified that the tenants have not paid rent since \$500 of the \$1,000 owing for June 2022 was paid late on June 10, 2022. The landlords testified that as of the date of the hearing the tenants now owe a total of \$6,500. The landlords affirmed that TJ came with a second cheque in June 2022 and asked the landlords to cash the cheque and give TJ the cash, which the landlords refused to do.

The landlords testified that they have not refused any attempts to pay rent, including the alleged cheques from the Ministry the tenants mentioned during the hearing. The landlords confirmed they have not received any other amount from the tenants or from the Ministry as the tenants suggest.

*Tenants' version of events*

The tenants testified that they have tried to pay rent and that the landlords have refused payment. The tenants also stated that the Ministry has issued cheques to the landlords, which the landlords have refused to cash. The tenants failed to provide any documentary evidence to support that cash was withdrawn and paid to the landlords, or that any cheques were returned from the landlords or that the Ministry has confirmed refusal by the landlords to cash a Ministry rent cheque.

When asked specifically about the June 2022 rent payment TJ testified that they provided a cheque to the landlords on June 5, 2022. However, later in the hearing, TJ contradicted themselves by stating that they paid cash for June 2022.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

I prefer the testimony of the landlords over the tenants based on the following. The tenants were advised during the hearing that their testimony was contradictory and that I preferred the consistent testimony of the landlords over the contradictory testimony of the tenants. I find that TJ contradicted themselves at least twice during the hearing, the first time denying that a tenancy agreement existed, which it clearly does as it was submitted in evidence, and then June 2022 rent being paid by cheque and then changed to be cash later in the hearing. In addition, I find the tenants testimony to be illogical, as I find it would be highly unlikely and illogical that the landlords would ever refuse an attempt to pay the rent owed.

Also, as the tenants failed to serve their application on the landlords, which resulted in their application being dismissed without leave to reapply, I find the 10 Day Notice was undisputed by the tenants. I find that failing to serve their Hearing Package is the equivalent of not disputing the 10 Day Notice as it has the same effect. Section 46(5) of the Act applies and states:

46(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]

In addition, section 26 of the Act applies and states:

**Rules about payment and non-payment of rent**

26(1) **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.

[emphasis added]

Given the above, I accept the testimony of the landlords that the tenants failed to pay the rent owing within 5 days of service of the 10 Day Notice and in addition, have not paid any rent since \$500 was paid for June 2022. I find the tenants have breached section 26 of the Act as a result and that section 46(5) of the Act applies and that the tenants are conclusively presumed to have accepted the end of tenancy date listed on

the 10 Day Notice as July 10, 2022. I uphold the 10 Day Notice as a result and find it is valid.

Pursuant to section 55 of the Act, once I dismissed the tenants' application to cancel the 10 Day Notice and I upheld the landlords' 10 Day Notice, I must grant the landlords an order of possession. Therefore, based on the above, I grant the landlords an order of possession **effective two (2) days after service on the tenants**. I find the tenancy ended on July 10, 2022, the effective vacancy date listed on the 10 Day Notice.

Section 55.1 of the Act also applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**  
[emphasis added]

Given the above and considering that I find the tenants have failed to pay a total of **\$6,500** as indicated above, I grant the landlords a monetary order pursuant to section 67 of the Act in that amount.

As the landlords' application had merit, I grant the landlords the recovery of their **\$100** filing fee pursuant to section 72 of the Act. Consequently, I find the landlords are owed a total monetary amount of **\$6,600**, comprised of \$6,500 in rent arrears and the \$100 filing fee.

### Conclusion

The tenants' application is dismissed, without leave to reapply, due to a service issue and that the timeline to dispute a 10 Day Notice has long since passed.

The landlords' application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession, which may then be filed in the Supreme Court of British Columbia to be enforced as an order of that court. Should the landlord require enforcement of the order of possession, the landlords must first serve the tenants with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenancy ended July 10, 2022.

The landlords have been granted a monetary order in the amount of \$6,600. Should the landlords require enforcement of the monetary order, the order must be first served on the tenants with a demand for payment letter, and then may be filed in the Provincial Court (Small Claims) to be enforced as an order of that court.

I caution that the tenants that they can be held liable for all costs related to the enforcement of the order of possession and monetary order, including, but not limited to courts costs and bailiff fees.

The tenants have been cautioned as indicated above.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlords only for service on the tenants.

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: December 9, 2022

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Residential Tenancy Branch