



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 ENERGY REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      For the tenant: CNR, RP, OLC, FF  
For the landlord: OPR, MNR-S, MND-S, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- an order requiring the landlord to make repairs to the rental unit;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notices served to the tenants;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenants;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the cost of the filing fee.

The landlord's agent (landlord) attended the hearing; the tenants did not attend.

The landlord testified that the tenants were served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by attaching the documents to the tenants' door on October 3, 2022.

Based upon the landlord's oral submissions, I find the tenants were served notice of this hearing in a manner complying with section 89(2) of the Act, and the hearing proceeded on the landlord's application in the tenants' absence. The landlord confirmed receiving the tenants' application.

Thereafter the landlord was provided the opportunity to present her evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### **Preliminary and Procedural Matters –**

#### **#1**

Despite having their own hearing scheduled for 9:30 am on December 29, 2022, and the landlord's application and notice of hearing, the tenants failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants at the hearing, **I order their application dismissed, without leave to reapply.**

**#2 –**

Although the landlord applied for compensation for damages, the landlord stated, and evidence of the landlord shows this claim actually was for the unpaid rent and late fees.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement shows the tenancy began on February 18, 2020, for a monthly rent of \$895, and a security deposit and pet damage deposit of \$447.50, each, being paid by the tenants. The tenancy began with another landlord and according to the agent, their company took over management of the tenancy on January 1, 2022. The current monthly rent is \$908, due on the first day of the month.

The landlord submitted evidence that on August 8, 2022 and September 8, 2022, they served the tenants with a Notice (August and September Notice, respectively), by attaching it to the tenants' door and by personal service. The September Notice listed a total of unpaid rent of \$4,923 owed as of September 1, 2022. The effective vacancy date listed on the Notice was September 22, 2022. Both the August and September Notice were filed into evidence, along with the proof of service.

The tenants filed their application to dispute the September Notice within the 5 days allowed, as their application was made on September 12, 2022. Further, the tenants' evidence shows that they have received multiple other 10 Day Notices from the landlord.

The landlord submitted that since the Notice was issued to the tenants, the tenants have failed to pay any rent payments and owe a total of \$7,722 in unpaid monthly rent,

as of the day of the hearing. The landlord confirmed this amount included a late fee of \$25 each month since April 2022, when the tenants stopped paying rent.

I note that the landlord said that the tenants have not paid any rent since April 2022. However, the landlord's monetary order worksheet filed in evidence shows the total unpaid rent for May 2022 was \$208.

### Analysis

#### **Order of Possession –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the RTB to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice on September 8, 2022, that the tenants owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenants filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

Therefore, pursuant to section 55(1) of the Act, I find that the landlord is entitled to, and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenants.

### **Monetary Order –**

For applications for dispute resolution involving a monetary claim, an applicant must serve the respondent by personal service or by registered mail (Section 89(1) of the Act).

In this case, I find the landlord submitted insufficient evidence that the tenants were served by either of those two methods, as the landlord said the tenants were served by attaching the documents to the tenants' door, which is allowed for claims such as for an order of possession.

I find that the landlord submitted sufficient, undisputed evidence to show that the tenants owe an outstanding balance of \$7,722 in unpaid monthly rent and late fees, through the date of the hearing. The late fees are \$25 for each month, April-December, 2022.

Section 55(1.1) of the Act 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]

Pursuant to section 55(1.1) of the Act, I grant the landlord a final, legally binding monetary order for the amount of \$7,497 for unpaid rent through December 2022.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement are recoverable from the tenants.

I have not included the amount of \$225 for the cumulative late fees, as monthly rent under the Act does not include late fees. The landlord is at liberty to make a further application for the late fees, as they were due under the written tenancy agreement.

As the landlord was successful with their application, I grant the landlord recovery of their filing fee of \$100.

Due to the above, I find the landlord is entitled to a total monetary award of \$7,597, comprised of outstanding rent of \$7,497 through December 2022 and the \$100 filing fee paid by the landlord for their application.

I direct the landlord to retain the tenants' security deposit of \$447.50 and the tenants' pet damage deposit of \$447.50 in partial satisfaction of their monetary award of \$7,597, and grant the landlord a monetary order for the balance due, in the amount of \$6,692.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are cautioned that costs of such enforcement are recoverable from the tenants.

### Conclusion

The tenants' application is dismissed without leave to reapply as they failed to attend the hearing.

The landlord's application for an order of possession of the rental unit has been granted.

The landlord is granted a monetary order in the amount of **\$6,692**, comprised of unpaid monthly rent owed by the tenants and the filing fee of \$100, less the tenants' security deposit and pet damage deposit.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 29, 2022