



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenants' application \*\*\*\*\*092: CNC, MNDCT  
Landlord's application \*\*\*\*\*578: OPR, MNRL-S, FFL  
Tenants' application \*\*\*\*\*282: CNR, RR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application \*\*\*\*\*092 pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to section 47; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67.

The landlord's application \*\*\*\*\*578 pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The tenants' application \*\*\*\*\*282 pursuant to the Act is for:

- cancellation of the 10 Day Notice, pursuant to section 46; and
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

I left the teleconference connection open until 9:48 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. Landlord SU, represented by agent GC (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and

participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

Preliminary Issue – Service of application \*\*\*\*\*092

The landlord confirmed receipt of the tenant’s notice of hearing in August 2022.

Based on the landlord’s convincing testimony, I find the tenants served the notice of hearing in accordance with section 89 of the Act.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**Rule 7 – During the hearing**

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**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.

Accordingly, in the absence of any attendance at this hearing by the applicant tenants, I order this application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy under the One Month Notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

The effective date of the One Month Notice is after the effective date of the 10 Day Notice.

The landlord affirmed he is not pursuing an order of possession under the One Month Notice.

Preliminary Issue – Service of application \*\*\*\*\*578

The landlord stated he served the notice of hearing via registered mail on November 30 and the evidence on December 14, 2022. The landlord mailed the packages to the rental unit. The tracking numbers are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the notice of hearing and the evidence in accordance with section 89 of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the notice of hearing on December 05 and the evidence on December 19, 2022, in accordance with section 90(a) of the Act.

Preliminary Issue – Service of application \*\*\*\*\*282

The landlord testified he did not receive the tenant's notice of hearing for file \*\*\*\*\*282.

Based on the landlord's convincing testimony, I find the tenants did not serve the notice of hearing for file \*\*\*\*\*282.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution  
Proceeding Package

**The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:**

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

Accordingly, as the tenants did not serve the notice of hearing, I order the application dismissed without leave to reapply.

#### Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$5,200.00 in unpaid rent for August, September, October and November 2022 to include an additional \$2,600.00 for the unpaid rent for December 2022 and January 2023.

The increase in the landlord's monetary claim for unpaid rent of December 2022 and January 2023 should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$7,800.00.

#### Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the 10 Day Notice?
2. a monetary order for unpaid rent?
3. an authorization to retain the deposit?
4. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained

rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord said the ongoing periodic tenancy started on January 01, 2022. Monthly rent is \$1,300.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord served the 10 Day Notice on August 13, 2022 by attaching it to the rental unit's front door.

A copy of the 10 Day Notice was provided. It is dated August 13, 2022 and the effective date is August 23, 2022. It states the tenant failed to pay rent in the amount of \$1,300.00 due on August 01, 2022.

The landlord affirmed the tenants did not pay rent in August, September, October, November and December 2022 and January 2023.

The landlord submitted a ledger into evidence indicating the tenants did not pay rent from August to December 2022.

The landlord is seeking an order of possession under the 10 Day Notice and a monetary order in the amount of \$7,800.00 for the unpaid rent from August 2022 to January 2023.

### Analysis

I accept the uncontested testimony that the landlord served the 10 Day Notice on August 13, 2022, in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenants are deemed to have received the Notice on August 16, 2022.

### Order of possession

Based on the landlord's convincing testimony and the tenancy agreement, I find that the landlord and the tenants agreed to a tenancy and the tenants are obligated to pay the monthly rent in the amount of \$1,300.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may 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.

Based on the landlord's convincing testimony, the Notice and the ledger, I find the tenants did not pay rent due on August, September, October, November, December 01, 2022 and January 01, 2023.

I note the tenants submitted an application to dispute the 10 Day Notice. However, as the tenants did not serve their notice of hearing, I dismissed the tenants application to dispute the 10 Day Notice.

I have reviewed the 10 Day Notice and I find the effective date is incorrect. Pursuant to section 53(2) of the Act, as I deemed the 10 Day Notice received on August 16, 2022, the effective date is automatically corrected to August 26, 2022. Otherwise, I find the form and content of the 10 Day Notice complies with section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the ground for ending the tenancy and it is in the approved form.

Section 68(2) of the Act states:

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,  
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenants are currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(a)(ii) and 68(2)(a) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act.

#### Monetary order

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Per section 26(1) of the Act, I award the landlord August, September, October, November, December 2022 and January 2023 rent in the total amount of \$7,800.00 (\$1,300.00 x 6 months).

Filing fee and deposit

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$650.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent for August, September, October, November, December 2022 and January 2023 (\$1,300.00 x 6)	7,800.00
Filing fee	100.00
Subtotal	7,900.00
Deposit (minus)	650.00
<b>Total:</b>	<b>7,250.00</b>

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$650.00 deposit and award the landlord \$7,250.00. The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: January 12, 2023

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Residential Tenancy Branch