



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STAND FAST INVESTMENTS  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNC, ERP, LRE, OPR-DR, MNR-DR, FFL, OPR, OPC,  
MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On September 8, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”) and seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*.

On October 7, 2022, the Tenants amended their Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “*Notice*”) pursuant to Section 46 of the *Act* and seeking an emergency repair Order pursuant to Section 62 of the *Act*.

On October 13, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 17, 2022, the Landlord made another Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking an Order of Possession based on a One Month Notice to end Tenancy for Cause pursuant to Section 47 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant K.G. attended the hearing, and M.L. and G.G. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no issues with service.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, and the other claims were dismissed with leave to reapply. The parties are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the One Month Notice to End Tenancy for Cause cancelled?
- Are the Tenants entitled to have the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities cancelled?

- If the Tenants are unsuccessful in cancelling the Notices, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fees?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2021, that the rent was currently established at an amount of \$1,300.00 per month, and that it was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

M.L. testified that the One Month Notice to End Tenancy for Cause was served to the Tenants on August 30, 2022, by hand.

As well, she advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on October 2, 2022, by hand. She stated that the Tenants did not pay any rent for October 2022, and thus, the Notice was served. She indicated that the Tenants did not have any authority to withhold the rent, and that they have not paid any rent since service of the Notice. The effective end date of the tenancy was noted as October 12, 2022, on the Notice.

The Tenant confirmed that they did not pay any rent for October 2022 and that they did not meet any of the criteria under the *Act* for withholding rent, although it was his belief that they were permitted to do so due to an alleged silverfish infestation. He also confirmed that they have not paid any rent since service of the Notice, and that it was his belief that a third party could hold the rent until a Decision was rendered on the Notice. However, he acknowledged that despite this belief, they did not even have the amount of rent that was owed since October 2022.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, I am satisfied that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were served the Notice on October 2, 2022. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was served on October 2, 2022, the Tenants must have paid the rent in full or disputed the Notice by October 7, 2022, at the latest. The undisputed evidence is that the Tenants did not pay the rent in full by October 7, 2022, to cancel the Notice. While they disputed this Notice on time, there is no evidence before me that the Tenants had a valid reason under the *Act* for withholding the rent. As such, I am satisfied that they breached the *Act* and jeopardized their tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As well, as the Landlord was successful on this Notice, it is not necessary to consider the merits of the One Month Notice to End Tenancy for Cause.

Furthermore, I am satisfied from the undisputed evidence that the Landlord should be entitled to a monetary award for the rental arrears from October 2022 to January 2023.

As the Landlord was successful in their Applications, I find that the Landlord is entitled to recover the two \$100.00 filing fees.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears for October 2022	\$1,300.00
Rental arrears for November 2022	\$1,300.00
Rental arrears for December 2022	\$1,300.00
Rental arrears for January 2023	\$1,300.00
Filing Fee	\$100.00
Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$5,400.00</b>

#### Conclusion

Based on the above, Tenants' Application is dismissed without leave to reapply.

Furthermore, the Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$5,400.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. 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 26, 2023

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Residential Tenancy Branch