



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding IMH POOL XXI LP C/O METCAP LIVING MANAGEMENT  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL; CNR, FFT

### Introduction

This hearing dealt with the landlords' application, filed on November 25, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order of \$2,225.00 for unpaid rent, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for its application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on November 10, 2022, pursuant to the *Act* for:

- cancellation of the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 4, 2022, and effective November 23, 2022 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The two tenants did not attend this hearing. The landlords' agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 39 minutes.

This hearing began at 11:00 a.m. and ended at 11:39 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NODRP"). I also confirmed on the teleconference system that the landlords' agent and I were the only people who called into this hearing.

The landlords' agent confirmed the names and spelling for her and the two tenants. She provided the legal names of the two landlord companies named in this application (collectively "landlords"). She provided her email address for me to send a copy of this decision to the landlord after this hearing.

The landlords' agent stated that the landlord company IPXL owns the rental unit. She said that the other landlord company MLMI (which the landlords noted as "care of" in the style of cause) managed the rental unit for the owner. She provided the rental unit address. She confirmed that she worked in the legal department and she had permission to represent both landlords at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any hearings by any participants. At the outset of this hearing, the landlords' agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlords' agent. She had an opportunity to ask questions, which I answered. She did not make any accommodation requests. She confirmed that she was ready to proceed with this hearing.

I provided the landlords' agent with ample and additional time during this hearing to find the landlords' documents and to look through them. She stated that she did not know where the landlords' application was located. She claimed that another landlord agent usually handles these RTB hearings. During this hearing, I was required to point the landlords' agent to specific page numbers in the NODRP and the 10 Day Notice, in order to answer my questions.

I informed the landlords' agent that she expended 39 minutes of this 60-minute maximum hearing time, trying to locate documents, look up information, and calculate rent, because she was not adequately prepared for this hearing. I notified her that the tenants did not attend this hearing, only the landlords' agent was present, but she failed to provide sufficient evidence on behalf of the landlords.

#### Preliminary Issue – Dismissal of Tenants' Application

The landlords' agent stated that the landlords did not receive a copy of the tenants' application for dispute resolution hearing package.

Rule 7.3 of the RTB *Rules* states:

*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.*

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, the landlords may be entitled to an order of possession and a monetary order for unpaid rent, if the landlords' 10 Day Notice meets the requirements of section 52 of the *Act* and the landlords provide sufficient evidence to obtain the above orders, on a balance of probabilities.

For the below noted reasons, I do not issue an order of possession or a monetary order to the landlords, against the tenants.

#### Preliminary Issue – Service of Landlords' Application

The landlords' agent stated that both tenants were served with separate copies of the landlords' application for dispute resolution hearing package on December 6, 2022, both by way of registered mail. The landlords provided copies of two Canada Post receipts and the landlords' agent confirmed both tracking numbers verbally during this hearing.

The landlords' agent said that the tenants received and signed for the above mail packages on December 9, 2022. She claimed that the landlords provided copies of both Canada Post tracking reports as evidence for this hearing, but later confirmed that they did not.

I informed the landlords' agent that, as per the online RTB dispute access site notes, the RTB emailed copies of the landlords' application documents to the landlords on November 30, 2022, and told the landlords to serve the tenants by December 3, 2022. When I asked why the landlords served the tenants late on December 6, 2022, the landlords' agent claimed that she did not know and there were no notes on her file, regarding same.

Section 59(3) of the *Act* states the following (my emphasis added):

#### *Starting Proceedings*

59 (3) Except for an application referred to in subsection (6), **a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it**, or within a different period specified by the director.

Rule 3.1 of the RTB Rules states, in part (my emphasis added):

*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].*

The landlords were provided with application packages from the RTB, including instructions regarding the hearing process. The landlords were provided with the NODRP from the RTB, after filing this application. The NODRP contains the phone numbers and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

**The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.**

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*

- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

I find that the landlords failed to provide sufficient evidence that both tenants were properly served with the landlords' application for dispute resolution hearing package within 3 days, as required by sections 59 and 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and the NODRP. The tenants did not appear at this hearing to confirm receipt of the above documents.

I informed the landlords' agent that she did not provide any evidence regarding service of the landlords' rent ledgers, dated March 7, 2023, and March 21, 2023, to the tenants, which were uploaded to the RTB online dispute access site on March 8, 2023, and March 20, 2023, respectively. I notified her that I could not consider this evidence because it was not served to the tenants as required, contrary to Rule 3.1 of the *RTB Rules*. The tenants did not appear at this hearing to confirm receipt of the above documents.

The landlords' agent was provided with an opportunity to withdraw the landlords' application at this hearing, and she chose to proceed with this hearing, claiming that she was prepared and had all of the landlords' relevant documents and information in front of her.

#### Preliminary Issue – Landlords' Adjournment Request

The landlords' agent asked if this hearing could be adjourned to provide the landlords with additional time to serve the landlords' rent ledgers from March 2023, to the tenants.

I informed the landlords' agent that I would not grant an adjournment of the landlords' application. I made this decision after taking into consideration the criteria established in Rule 7.9 of the *RTB Rules*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that the need for an adjournment arises out of the intentional actions and neglect of the landlords. The landlords received an NODRP for their application, including information regarding evidence, service, and deadlines, as per the RTB *Rules*. However, the landlords submitted late evidence, which was not served to the tenants, and did not serve the tenants in a timely manner with the landlords' original application. The landlords had 4 months to adequately prepare for this hearing and failed to do so.

I find that an adjournment would not likely result in a resolution of both applications. Both parties did not settle these applications, prior to this hearing, despite filing same in November 2022 and this hearing occurring in March 2023. The tenants did not attend this hearing.

#### Preliminary Issue – Particulars of Landlords' Application

Rule 2.5 of the RTB *Rules* states the following (my emphasis added):

##### *2.5 Documents that must be submitted with an Application for Dispute Resolution*

*To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:*

- ***a detailed calculation of any monetary claim being made;***
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

*When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the*

*application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.*

Pursuant to section 59(2)(b) of the *Act*, the landlords' application must include the full particulars of the dispute that is the subject of this hearing. The purpose of the provision is to provide the tenants with notice and enough information to know the landlords' claims so that they can properly respond.

Pursuant to section 59(5)(a) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. The landlords filed their application, and, as the applicants, have the burden of proof, on a balance of probabilities, to apply for the correct claims, provide sufficient particulars and evidence of their claims, and prove their claims at a hearing, on a balance of probabilities.

I informed the landlords' agent that the landlords failed to provide sufficient particulars of their monetary claims.

The landlords indicated a total monetary claim of \$2,225.00 in their application and monetary order worksheet but they did not sufficiently describe or provide a breakdown of this claim in the monetary order worksheet. The landlords indicated "July-Nov 2022 Rent" of \$2,100 total and "July-Nov 2022 NSF" of \$125.00 total, in their monetary order worksheet. The landlords did not apply for NSF fees in this application, only unpaid rent. The landlords did not indicate the amount of unpaid rent or NSF fees for each month, in the monetary order worksheet.

I informed the landlords' agent that she was unable to provide a breakdown for the total amount of unpaid rent of \$4,100.00 indicated in the 10 Day Notice, which is the basis of the landlords' application for an order of possession for unpaid rent and a monetary order for unpaid rent. I provided her with ample and additional time during this hearing to calculate this information and she was unable to do so, in a timely manner.

During this hearing, the landlords' agent asked to retain the tenants' security deposit. She agreed that the landlords did not file an application for same, nor did they amend their application prior to this hearing, to complete same. I informed her that I would not amend the landlords' application to add this claim, as the landlords had ample time to do so, prior to this hearing. She affirmed her understanding of same.

I informed the landlords' agent that the landlords filed this application on November 25, 2022, and this hearing occurred on March 24, 2022. The landlords had ample time of approximately 4 months, to know the full details of their application, provide an accurate and detailed monetary order worksheet, provide accurate and detailed testimony and evidence regarding unpaid rent, and serve proper and timely notice to the tenants, prior to this hearing, but failed to do so.

I informed the landlords' agent that the landlords' application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified her that the landlords are at liberty to file a new application and pay a new filing fee, if they want to pursue this matter in the future. She affirmed her understanding of same.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

The landlords' application to recover the \$100.00 filing fee paid for their application, is dismissed without leave to reapply. The remainder of the landlords' application is dismissed with leave to reapply.

I do not issue an order of possession or a monetary order to the landlords, against the tenants.

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: March 24, 2023

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Residential Tenancy Branch