



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SAHAR INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPU, MNRL, FFL, OPR, MNRL, FFL

### Introduction

This hearing dealt with cross-applications filed by the Landlord. On October 18, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for unpaid rent or utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 5, 2023, the Landlord made another Application for Dispute Resolution seeking an Order of Possession based on another 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “*Notice*”) pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent or utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

M.F., C.R., and G.C. attended the hearing as agents for the Landlord; however, neither Tenant attended at any point during the 36-minute teleconference. M.F. immediately advised that he was in the hospital due to a medical emergency, and that he would be unable to attend the hearing. As such, he deferred to C.R. and G.C. to represent the Landlord. All parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 10:06

AM. Only representatives of the Landlord dialed into the teleconference during this time. 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 I was the only other person who had called into this teleconference.

C.R. advised of the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended accordingly. As well, she testified that the Landlord's Notice of Hearing and evidence packages for the first Application were served to the Tenants late, and as a result, the first Application was abandoned.

She then stated that the Landlord's Notice of Hearing and evidence packages for the second Application were served to the Tenants by registered mail on January 11, 2023 (the registered mail tracking numbers are noted on the first page of this Decision). She advised that these packages were refused by the Tenants and returned to sender. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been deemed to have received these packages five days after they were mailed. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

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.

#### Issue(s) to be Decided

- 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.

C.R. provided solemnly affirmed testimony that the tenancy started on June 15, 2015, that rent was currently established at an amount of \$696.00 per month, and that it was due on the first day of each month. A security deposit of \$325.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration.

Given that the first Application was abandoned, she then solemnly affirmed that the second 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on November 28, 2022, by being posted to the Tenants' door. She testified that \$400.00 of the Tenants' monthly rent was paid by the ministry, and that the Tenants were responsible for paying the difference. However, she stated that the Tenants have not paid this difference for approximately 13 months. While it was noted on the Notice that \$3,269.00 was owing for rent on November 1, 2022, she could not reference any documentary evidence to corroborate how this specific amount was calculated. Although, she confirmed that the Tenants did not have any authority under the *Act* to withhold any of the rent. The effective end date of the tenancy was noted as December 8, 2022, on the Notice.

### 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 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.

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. Based on my review of the Notice, I am satisfied that it is a valid Notice.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on December 1, 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 deemed received on December 1, 2022, the Tenants must have paid the rent in full or disputed the Notice by December 6, 2022, at the latest. As the Tenants did not pay any amount of rent that they believe was owed to cancel the Notice, and as the Tenants did not dispute the Notice, I am satisfied that they were conclusively presumed to have accepted the Notice and that the tenancy should end. As well, as there is no evidence before me that the Tenants had a valid reason under the *Act* for withholding the rent, I am satisfied that they breached the *Act* and jeopardized their tenancy.

Based on the consistent and undisputed evidence, 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 such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

However, with respect to the actual amount of rent owing to date, as I am not satisfied that the Landlord has established how much rent is actually in arrears, the Landlord's claim for monetary compensation is dismissed with leave to reapply.

As the Landlord was not successful in the first Application, I do not find that the Landlord is entitled to recover the filing fee for that Application.

As the Landlord was successful in the second Application, I find that the Landlord is entitled to recover the filing fee for that Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of that claim.

Conclusion

Based on the above, 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.

The Landlord's claims for a Monetary Order for compensation are dismissed with leave to reapply.

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 2, 2023

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Residential Tenancy Branch