



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      CNR FFL FFT OPC

### Introduction

The Tenants sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) under section 46 of the *Residential Tenancy Act* (“Act”). The Tenants also sought to recover the application fee under section 72 of the Act.

The Landlord sought an order of possession under section 47 based on an undisputed One Month Notice to End Tenancy for Cause. The Landlord also sought to recover the cost of the application fee pursuant to section 72 of the Act. The Landlord’s name has been updated on the Tenants’ application, and this is reflected in the style of cause.

Neither Tenant attended the hearing. However, the Landlord’s agent attended the hearing and they were affirmed before testifying or presenting evidence.

### Preliminary Issue: Tenancy Has Ended

The Tenants vacated the rental unit on January 10, 2023. As such, the Tenants’ and Landlord’s applications are largely moot. The only live issue is whether the Landlord may obtain an order for unpaid rent pursuant to section 55 (1.1) of the Act.

### Issues

Is the Landlord entitled to an order for unpaid rent and to recover their application fee?

### Background and Evidence

The tenancy began on November 15, 2021 and ended on January 10, 2023. Monthly rent due on the first day of the month was \$3,600, later \$3,654 (there was a legal rent increase provided to the Tenants). The Tenants paid a \$1,800 security deposit and a \$1,000 pet damage deposit. The deposits are currently held in trust pending the outcome of these applications. A copy of the tenancy agreement was in evidence.

The agent testified that the Notice was served on the Tenants by way of pre-agreed email on November 5, 2022. The Notice, a copy of which is in evidence, indicated that the Tenants had not paid rent that was due on November 1, 2022.

The agent further testified that no rent of \$3,600 was ever paid for November, no rent of \$3,654 was ever paid for December, and no partial rent of \$1,178.70 was ever paid for January 1 to 10, 2023, inclusive. In total, rent arrears are \$8,432.70.

It is noted that the Landlord sought an additional \$7,390.71 in compensation related to costs for repairs caused by the Tenants to the rental unit. However, as these applications are restricted to the issues set out within them, including authority for me to grant an order requiring the payment of unpaid rent, I am unable to consider a claim for compensation unrelated to unpaid rent. That said, the Landlord remains at liberty to make an application for dispute resolution seeking such compensation.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord's undisputed, affirmed evidence persuades me to find that the Tenants did not pay rent when the rent was due on November 1, 2022, and, that they did not pay any rent for the remainder of their tenancy. I find on a balance of probabilities that the Notice was given for a valid reason, namely, the Tenants' non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, I uphold the validity of the Notice.

Since the Tenants' application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. The Tenants are therefore ordered to pay \$8,432.70 to the Landlord.

The Landlord is entitled to recover the cost of the application fee. Therefore, the Tenants are further ordered to pay \$100.00 to the Landlord pursuant to section 72(1) of the Act. In total the Landlord is awarded \$8,532.70.

Pursuant to section 38(4)(b) of the Act, the Landlord is authorized and ordered to retain the \$2,800 in security and pet damage deposits in partial satisfaction of the award.

A monetary order for the remaining amount (\$5,732.70) is attached to this decision and the order must be served on the Tenants. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

### Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlord's application is dismissed, in part, without leave to reapply. However, the Landlord is granted a monetary order in the amount of \$5,732.70 pursuant to section 55(1.1) of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 16, 2023

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Residential Tenancy Branch