



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR OLC FFT

### Introduction

This dispute related to the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 15, 2023 (10 Day Notice),
2. Order directing the landlord to comply with the Act, Regulation or tenancy agreement,
3. Filing fee.

The parties attended the teleconference hearing. The parties were affirmed, and the parties were permitted to ask questions. The parties confirmed having had the opportunity to review all evidence served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their email addresses and were advised that the decision would be emailed to both parties.

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2022 and is scheduled to convert to a month-to-month tenancy as of June 1, 2023. Monthly rent is \$2,900 per month and is due on the first day of each month. The tenants paid a security deposit of \$1,450 and a pet damage deposit of \$200

at the start of the tenancy (\$1,650 combined deposits), which the landlord continues to hold.

A copy of the 10 Day Notice was submitted and indicates that \$2,900 was owed as of February 1, 2023. The 10 Day Notice is dated and signed, with an effective vacancy date of February 25, 2023. The tenants applied on February 19, 2023 to dispute the 10 Day Notice, which was dated February 15, 2023.

The agent confirmed the following information:

- A. January 2023 rent of \$2,900 = paid, \$0 owing
- B. February 2023 rent of \$2,900 = \$900 still owing
- C. March 2023 rent of \$2,900 = nothing paid, \$2,900 owing
- D. April 2023 rent of \$2,900 = nothing paid, \$2,900 owing

The tenants first stated that \$2,300 was paid for January 2023 rent then changed their testimony to paying the full January 2023 rent. The tenants then claim to have paid \$2,300 for February 2023 rent, although the landlord stated only \$2,000 was paid. The tenants admitted that March and April 2023 rent were not paid as they were awaiting the hearing.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the tenants were not credible as their testimony changed during the hearing, whereas the landlord and agent did not change their testimony. Therefore, I prefer the testimony of the landlord and agent over the tenants given the above.

Secondly, I have reviewed the 10 Day Notice and find it complies with section 52 of the Act. Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon

receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the 10 Day Notice within five (5) days.

When a 10 Day Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent. I find the tenants have provided insufficient and contradictory evidence to support that rent was paid.

### *Monetary Order*

Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

[emphasis added]

Given the above, I find the tenants owe \$900 for February 2023 rent, and owe \$2,900 for both March and April 2023 as the tenants continue to occupy the rental unit. The tenants were asked why they owe April 2023 rent and the tenants were advised because they still are occupying the rental unit and rent was due April 1, 2023. Accordingly, I find the tenants breached section 26 of the Act, which requires that rent was to be paid in full on the first day of each month. I award the landlord **\$6,700** in unpaid rent comprised of \$900 owing for February 2023, \$2,900 owing for March 2023 and \$2,900 owing for April 2023.

I authorize the landlord to retain the full combined deposits of \$1,650, which I find has accrued \$8.29 in interest, for a total security deposit with interest of \$1,658.29. I find this amount offsets the \$6,700 claim and I award the landlord a monetary order under section 67 of the Act for the balance owing of **\$5,041.71**.

### *Order of Possession*

Upon hearing from the parties, for the reasons already given, I find that the tenants owed the landlord rent when the 10 Day Notice was issued and that the tenants failed to pay the amount owing within 5 days of receiving the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was February 25, 2023, which has passed. I therefore find the landlord submitted sufficient evidence to support the 10 Day Notice.

As a result, I find the tenancy has ended for the tenants' failure to pay rent owed and the landlord is entitled to gain possession of the rental unit.

I therefore **dismiss** the tenant's application seeking cancellation of the 10 Day Notice.

The tenants ought to have paid the monthly rent, as they did earlier in the tenancy.

**I find** the tenancy ended on February 25, 2023, the effective date of the 10 Day Notice.

As the tenants failed to vacate the rental unit, I find that landlord has not reinstated the tenancy and that I grant the landlord an order of possession for the rental unit effective **2 days after service upon the tenants**, as no money has been paid for March or April 2023 either.

I do not grant the filing fee as the tenants' application has been dismissed.

### Conclusion

The tenant's application fails and is dismissed without leave to reapply.

The tenancy ended on February 25, 2023.

The landlord has been granted an order of possession of the rental unit effective two (2) days after service on the tenants, which must be served on the tenants by the landlord. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court. The tenants are cautioned that costs of such enforcement are recoverable from the tenants.

The landlord is granted a monetary order in the amount of \$5,041.71 comprised of unpaid rent owed by the tenants through the date of the hearing, after the combined deposits plus interest were offset. This order must be served on the tenants by the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenants are cautioned that costs of such enforcement, including bailiff fees, are recoverable from the tenants.

The decision will be emailed to the tenants and landlord.

The orders will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 4, 2023

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Residential Tenancy Branch