



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, RR, RP, PSF, FFT

### Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a Notice to End Tenancy for Unpaid Rent for the month of January 2023 [the 'Notice'].
2. Payment of \$1,742.62 for overpayment of utilities and costs to clean the rental unit [the 'Monetary Order'].
3. Reduction of rent by \$1,250.00 for overpayment of rent and utilities.
4. Repair the rental unit by eliminating mold.
5. Provide utilities for the rental unit.
6. Reimbursement for the \$100.00 filing fee for this application.

The landlord named by the tenants in the application appeared at the hearing on 4 April 2023, along with the other landlord named in the tenancy agreement. The tenants also appeared.

### Preliminary Matters

At the outset of the hearing, the parties clarified that the tenants have since moved out of the rental unit. And so the tenants informed me and the landlords that they would not pursue orders 3, 4 and 5 as set out above.

Also, issues arose during the hearing regarding the Monetary Order. The tenants began the hearing by telling me that, while they felt they could proceed, they had been dealing with family illness and also had not been able to serve the landlords with certain

documents that they wanted to rely upon in the hearing pertaining to the Monetary Order.

The landlords confirmed that they had not received the documents to which the tenants referred, and which they hoped to introduce in the hearing.

Furthermore, upon hearing from the tenants as to the nature of the Monetary Order they were seeking, I was concerned that the Monetary Order was unrelated to the dispute over the Notice.

The Monetary Order that the tenants were seeking dealt with a claim that they had directly paid for heating during the tenancy, though the landlords had agreed with them that heating costs would be included in their rent. Also, the tenants wanted compensation for having to clean carpets in the rental unit.

Rule 2.3 of the RTBs Rules of Procedure stipulates that, 'Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.'

I determined that the nature of the Monetary Order was unrelated to the dispute over the Notice (*i.e.* whether the tenants had paid rent in January). Because of this, and because of the documents that the tenants wished to rely upon but had not served upon the landlords, I dismissed the tenants' application for the Monetary Order, with leave to re-apply.

In doing so, I do not make any finding on the merit of the tenants' claim: only that their claim is unrelated to the issue of unpaid rent. The tenants are free to re-apply for the Monetary Order, and in doing so presumably will have an opportunity to serve the landlords with the documents they feel are important.

### Issue to be Decided

Are the landlords entitled to an order that the tenants pay the landlords rent for January?

### Background and Evidence

The parties agreed that rent for the unit was \$2,750.00 *per* month, due on the 15<sup>th</sup> day of each month.

The landlords told me that they did not receive any rent for January 2023, which was due on 15 January.

The tenants conceded that they did not pay any rent for January 2023. The tenants told me that they did not pay rent for January because they needed the money to move to another residence. They decided they needed to do this because of mold in the unit, which the landlords refused to address.

When I asked the tenants which section of the *Residential Tenancy Act* [the 'Act'] gave them the right to not pay rent, they conceded that there was none.

### Analysis

The tenants conceded that they did not pay rent, as the Notice alleged. But the tenants argued, in effect, that they didn't have to, because they needed the money to move somewhere else.

Section 26 (1) of the Act says that:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence of the tenants (that is, that they failed to pay rent for January, and that they had no right under the Act to do so), I find that the tenants owe the landlords \$2,750.00 for January rent.

### Conclusion

I order that the tenant pay to the landlords \$2,750.00 for unpaid rent, *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the tenants' security deposit of \$1,375.00 in partial satisfaction of this sum, *per* section 72 (2) (b) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB per section 9.1(1) of the *Residential Tenancy Act*.

Dated: 5 April 2023

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Residential Tenancy Branch