



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, RR, LRE, LAT, OLC, FFT

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed January 16, 2023;
- an order pursuant to ss. 33 and 67 seeking compensation for the cost of emergency repairs;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 70 restricting the Landlord’s right of entry;
- an order pursuant to s. 70 seeking authorization to change the locks to the rental unit;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

M.M. and B.M. appeared as the Tenants. T.B. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants advise having served the Landlord with their application and evidence. The Landlord acknowledges receipt of the Tenants’ application materials though noted that some of it had been received late. Despite this, the Landlord indicates that she raises no objection to late service and was prepared to proceed with the hearing. Accordingly,

I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Tenants' application materials.

The Landlord advises that she left her response evidence in the Tenants' mailbox late on April 3, 2023 and that she took a photograph as proof of service. The Tenants deny receipt of the Landlord's evidence. Review of the Landlord's evidence shows that no photograph was provided as proof of service.

The methods of service for dispute resolution proceedings are set out under s. 89 of the *Act*. Though leaving documents in a conspicuous place is permitted under s. 89(2) of the *Act*, that section is not applicable here since this is not the Landlord's application under ss. 55, 56, or 56.1 of the *Act*. As such, I find that the methods specified under s. 89(1) of the *Act* apply such that documents can be served via registered mail or by personal service, not by leaving them in the mailbox.

I find that the Landlord has failed to prove service via the methods set out under s. 89(1) of the *Act* and failed to prove service generally. The Tenants deny receipt of the evidence. As such, the Landlord's evidence is not included and shall not be considered by me.

#### Preliminary Issue – Tenants' Claims

The Tenants apply for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

In this instance, the primary issue is whether the tenancy will end or continue based on the 10-Day Notice. Indeed, some of the Tenants' claims would only be relevant should the tenancy continue such that they are secondary to whether the 10-Day Notice is enforceable.

Accordingly, I sever all aspects of the Tenants' claim from their application except for the return of their filing fee. Regardless of the outcome of this decision, the Tenants' claims under ss. 33 and 67 (compensation for emergency repairs), 67 (monetary compensation), and 65 (past rent reduction) of the *Act* are dismissed with leave to

reapply. Depending on whether the tenancy continues or ends, the Tenants' claims under ss. 65 (future rent reduction), 70 (conditions on Landlord's entry), 70 (authorization to change the locks), and 62 (order that the Landlord comply) of the *Act* may or may not be dismissed with leave to reapply.

The hearing proceeded strictly on the issue of the enforceability of the 10-Day Notice.

### Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and order for unpaid rent?
- 3) Are the Tenants entitled to their filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following aspects of the tenancy:

- Rent of \$1,200.00 is due on the first of each month.
- The Tenants continue to reside within the rental unit.

I am told by the parties that the tenancy agreement was originally with B.M.'s father and that the Tenants took over the lease in November 2021. The Tenants provide a copy of the tenancy agreement in their evidence.

The Landlord advises that the 10-Day Notice was served on the Tenants by posting it to their door on January 16, 2023. The Tenants acknowledge receipt of the 10-Day Notice and indicate they did receive it on January 16, 2023, though also mention it was received in November 2022, that they did not receive it, and that they did receive it such that they complied with the 5-day application deadline. Review of the Tenants' application shows they received the 10-Day Notice on January 15, 2023, which is the day before it was signed.

This is the Tenant's application. I am satisfied they have received the 10-Day Notice, otherwise they would not have filed to dispute it. I accept that it was posted to the Tenant's door as mentioned by the Landlord on January 16, 2023 and find that this was

in accordance with s. 88 of the *Act*. I have reason to doubt the veracity of the Tenants' testimony on this point, given the diverging answers I received at the hearing. Accordingly, I make use of s. 90 of the *Act* and deem that the 10-Day Notice was received on January 19, 2023.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice provided to me by the Tenants and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The Landlord testified that the Tenants have failed to pay for the months of December 2022 through to April 2023. The Landlord further testified that the Tenants have not made partial payment on their rent either. By the Landlord's accounting, total unpaid rent is \$6,000.00.

The Tenants do not deny that they have failed to pay rent as alleged by the Landlord. However, B.M. indicates that he undertook various repairs at the property in which he spent approximately \$8,000.00 and was not reimbursed by the Landlord. The Tenant provides various receipts as evidence of the work undertaken. The Landlord highlights that some of the receipts predate the tenancy and others are illegible.

Under s. 33(7) of the *Act*, a tenant may deduct out of pocket expenses from rent provided they were incurred for emergency repairs and the process set out under s. 33 has been followed. This means the repairs must be an emergency repair as defined by s. 33(1) of the *Act*, the landlord has been notified at least twice by the tenant, and following the attempts, the landlord be given a reasonable time to undertake the repairs. After those expenses are incurred, a tenant must also claim reimbursement from the

landlord by way of written demand with an accounting and attached receipts for the amount claimed as set out under s. 33(5) of the *Act*.

The Tenant B.M. says that he did notify the Landlord of the repair problems before incurring the expenses. The Landlord denies this, saying the only notice she received was for an electrical issue but that she did wish to both inspect the issue and retain an electrician but was unable to do so as the Tenants denied her access to the rental unit.

Leaving aside whether any of the repairs mentioned by the Tenants are emergency repairs as defined by s. 33(1) of the *Act*, the Tenants have failed to provide any evidence to support the Landlord had been given notice of the repair issues. I have further been provided no evidence to support that a written demand was made to the Landlord for their repayment. I find that the Tenants have failed to establish that they complied with the process set out under s. 33 of the *Act* such that they were not permitted to deduct money from rent under s. 33(7).

As there is no dispute that rent had not been paid and the Tenants were not permitted to withhold rent under the *Act*, I find that the Landlord has shown that the 10-Day Notice was properly issued. The Tenants application to cancel the 10-Day Notice is dismissed without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession effective two days after it is received by the Tenants.

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. I have little difficulty finding unpaid rent totalling \$6,000.00, which the parties confirm.

The 10-Day Notice also lists unpaid utilities totalling \$2,593.91. The Landlord advises that statements for these amounts, which pertain to municipal utilities, were sent to the Tenants and demands for payment made by way of letter sent on October 22, 2022, December 29, 2022, and January 16, 2023. As the Landlord's evidence was excluded, I am unable to find that any written demands were made for the utilities such that the utilities cannot be treated as unpaid rent under s. 46(6) of the *Act*. This means I cannot

order these amounts under s. 55(1.1) of the *Act*. To be clear, I make no findings on the utilities claim advanced by the Landlord other than that they cannot be dealt with under s. 55(1.1). The Landlord is at liberty to seek compensation for the utilities but must do so by filing her own application.

### Conclusion

The Tenants' claims under ss. 33 and 67 (compensation for emergency repairs), 67 (monetary compensation), and 65 (past rent reduction) of the *Act*, which were severed at the outset of the hearing, are dismissed with leave to reapply.

As the tenancy is over, the Tenants' claims severed from the application under ss. 65 (future rent reduction), 70 (conditions on Landlord's entry), 70 (authorization to change the locks), and 62 (order that the Landlord comply) of the *Act* are dismissed without leave to reapply.

I dismiss the Tenants' claim to cancel the 10-Day Notice without leave to reapply.

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord is entitled to an order for unpaid rent under s. 55(1.1) of the *Act*. The Tenants shall pay **\$6,000.00** to the Landlord as unpaid rent.

I find that the Tenants were unsuccessful in their application. Their claim for the filing fee under s. 72(1) of the *Act* is dismissed without leave to reapply.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: April 13, 2023