



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenants: **CNR (X 4)**

Landlord: **OPR-DR, MNR-DR, FFL**

### **Introduction**

This hearing dealt with the Tenants' four applications pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for the 10 Day Notice pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, his Interpreter/Support person, and one Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenants with the first 10 Day Notice on December 3, 2022 by posting the notice on the Tenants' door. The Tenant confirmed receipt and applied for dispute resolution. I find the first 10 Day Notice was served on the Tenants on December 3, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenants with the second 10 Day Notice on December 15, 2022 by posting the notice on the Tenants' door. The Tenant confirmed receipt. I find the second 10 Day Notice was deemed served on the Tenants on December 18, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord personally served the Tenants with the third 10 Day Notice on January 4, 2023. The Tenant confirmed receipt and applied for dispute resolution. I find the third 10 Day Notice was deemed served on the Tenants on January 4, 2023 according to Sections 88(a) of the Act.

The Landlord served the Tenants with the fourth 10 Day Notice on January 15, 2023 by posting the notice on the Tenants' door. The Tenant confirmed receipt on January 17, 2023 and applied for dispute resolution. I find the fourth 10 Day Notice was sufficiently served on the Tenants on January 17, 2023 according to Section 71(2)(b) of the Act.

The Landlord served the Tenants with the fifth 10 Day Notice on February 1, 2023 by posting the notice on the Tenants' door. The Tenant confirmed receipt on February 4, 2023 and applied to amend their existing dispute resolution application to add this notice. I find the fifth 10 Day Notice was sufficiently served on the Tenants on February 4, 2023 according to Section 71(2)(b) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on January 13, 2023 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord said they expected a delivery in December. They finally received this package, but are not sure if they received all the evidence. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on January 18, 2023, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that they served the Tenants with their Notice of Dispute Resolution Proceeding package-OP/MN and evidence on March 7, 2023 and March 8,

2023 by Canada Post registered mail (the “NoDRP package-OP/MN”). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt. I find that the Tenants were deemed served with the NoDRP package-OP/MN five days after mailing them on March 12, 2023 and March 13, 2023 respectively in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matter

#### *Monetary Amount*

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord’s outstanding rent amount owing from the fifth 10 Day Notice issued which will amend their original application from \$6,800.00 to \$9,050.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### Issues to be Decided

Tenants:

1. Are the Tenants entitled to cancellation of any of the Landlord’s 10 Day Notices?

Landlord:

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 3, 2020. The fixed term ended on August 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,500.00. On August 23, 2021, rent payments were agreed to be \$750.00 on the first day of each month and \$750.00 on the fifteenth of each month starting October 1, 2021. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenants were issued five 10 Day Notices to end tenancy for unpaid rent. Everytime the Landlord issued a 10 Day Notice, the Tenants disputed the notice. One Tenant stated that she sent the NoDRP package to the Landlord by registered mail, but she could not provide the date and Tracking Numbers of the packages. The Landlord did not confirm receipt of each dispute resolution package from the Tenants.

The Tenants last payment of rent totalling \$750.00 was on December 1, 2022. After that payment was made, the outstanding rent amount was \$3,050.00. The Landlord issued his first of five 10 Day Notices after this payment on December 3, 2022 by posting the notice on the Tenants' door. The Tenant confirmed receipt of that notice and applied for dispute resolution.

The reason in the fifth 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$6,800.00 in outstanding rent on February 1, 2023 (this was the Tenants' outstanding balance up to February 28, 2023). The effective date of the 10 Day Notice was February 13, 2023.

One Tenant said they paid \$1,000.00 with cash on September 22, 2022, and said they had a receipt. The Tenants did not upload a copy of this alleged payment.

Both parties confirmed that the Tenants do not have permission from the Landlord to withhold rent, and the Tenant has not received an Order from an Arbitrator authorizing them to withhold rent. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$9,050.00. This was the amount outstanding after the non-payment of rent on April 1, 2023.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

***Landlord's notice: non-payment of rent***

- 46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*
- (4) *Within 5 days after receiving a notice under this section, the tenant may*  
(a) *pay the overdue rent, in which case the notice has no effect, or*  
(b) *dispute the notice by making an application for dispute resolution.*
- (5) *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*  
(a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*  
(b) *must vacate the rental unit to which the notice relates by that date.*

...

I found the Tenants were sufficiently served with the fifth 10 Day Notice on February 4, 2023. I find that the Landlord's fifth 10 Day Notice complied with the form and content requirements of Section 52 of the Act.

The Tenants said they applied for dispute resolution, but they could not prove service of their NoDRP packages or their Amendment to dispute the 10 Day Notice. The Tenants claim to have made a \$1,000.00 rental payment on September 22, 2022, but they did not provide proof that this cash payment was made. I find that the Tenants have not proven that they made a cash payment on September 22, 2022.

Either way, the Tenants were in significant rental arrears at the beginning of December 2022, and their last rental payment made was December 1, 2022. That payment did not cover the overdue rent amount. The parties confirmed that the Tenants do not have permission, from the Landlord or an Arbitrator, to withhold rent. I find the Landlord's 10 Day Notices are valid, and I dismiss all of the Tenants' applications to cancel the Landlord's notices.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

*(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.*

I have upheld the Landlord's fifth 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants.

The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$9,050.00 as of April 1, 2023. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision.

Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

|                              |            |
|------------------------------|------------|
| TOTAL OUTSTANDING RENT:      | \$9,050.00 |
| Less security deposit:       | -\$750.00  |
| Plus application filing fee: | \$100.00   |
| TOTAL OWING:                 | \$8,400.00 |

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$8,400.00. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with

this Order, this Order may be filed in the Small Claims Division of the Provincial 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 Act.

Dated: April 17, 2023

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Residential Tenancy Branch