



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      **CNR MNDCT LRE OLC FFT**

This hearing was convened as a result of the Tenants' application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenants applied for:

- cancellation of Ten Day Notices to End Tenancy for Unpaid Rent and/or Utilities dated May 14, 2022, September 5, 2022 and November 16, 2022 (collectively the 10 Day Notices) pursuant to section 46;
- a monetary order for compensation from the Landlords pursuant to section 67;
- an order to suspend or set conditions on the Landlords' right to enter the rental unit pursuant to section 70;
- an order for the Landlords to comply with the Act, *Residential Tenancy Regulations* (Regulations) and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.

The original hearing of the Application was held on March 28, 2023 (Original Hearing). One of the two Landlords (MS), an advocate (DR) for the Landlords and the two Tenants (RP and OC) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

After the Original Hearing, I found that I could not reconcile the rental payments provided in MS' testimony at that hearing. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision (Interim Decision) dated April 12, 2023. The Interim Decision stated the Landlords were to prepare spreadsheets (Spreadsheets) detailing the payments made by the Tenants toward rent and to utilities. The Interim Decision ordered the Landlords to serve the Spreadsheets on the Tenants and submit them to the RTB. The Interim Decision ordered the Tenants to serve the Landlords, and submit to the RTB, with any additional evidence they considered relevant to respond to the Spreadsheet. The

Notice of Adjourned Hearing and Interim Decision were served on the parties by the residential Tenancy Branch (RTB). MS, DR, RP and OC attended the Adjourned Hearing.

At the Original Hearing, RP stated the Tenants served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlords in person on November 27, 2022. MS stated the Landlords received the NDRP. As such, I find the NDRP was served on the Landlords in accordance with section 89 of the Act.

At the Original Hearing, RP stated the Tenants served their evidence on the Landlords in person on March 7, 2023. MS stated the Landlords received the Tenants' evidence. As such, I find the Tenants' evidence was served in accordance with the provisions of section 88 of the Act.

#### Preliminary Matter – Service of Landlords' Evidence on Tenants

At the Original Hearing, MS stated the Landlords submitted their evidence (Landlords' Original Evidence) to the RTB) but admitted they did not serve their evidence on the Tenants. Rule 3.15 of the RoP states:

##### **3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch *not less than seven days before the hearing*.

See also Rules 3.7 and 3.10.

[emphasis in italics added]

MS admitted the Landlords did not serve their evidence on the Tenants. As such, the Landlords did not comply with Rule 3.15 of the RoP. Based on the foregoing, other than for the tenancy agreement, which I need to review for the hearing, I order the Landlords evidence is not admissible for this proceeding. I told the Landlords they had the option of providing oral testimony on the contents of the excluded evidence or call witnesses to provide oral testimony on the contents of the excluded evidence for the Original Hearing.

As the Original Hearing was adjourned, I ordered the Landlords to re-serve the Original Evidence on the Tenants. I also ordered the Landlord to serve the Spreadsheets on the Tenants. DS stated the Landlords served the Spreadsheets on the Tenants in-person on April 18, 2023. RP acknowledged the Tenants received the Spreadsheets. As such, I find the Spreadsheets were served on the Tenants in accordance with the provisions of section 88 of the Act. RP stated the Tenants did not serve any evidence on the Landlords to respond to the Spreadsheets.

#### Preliminary Matter – Confusion Regarding Tenant OC

At the beginning of the Original Hearing, I asked RP why OC appeared as an applicant on the Application when the tenancy agreement did not name her as a tenant. RP was unable to provide an explanation. I then asked the two Landlords whether there had been an amendment to the tenancy agreement to add OC as a tenant and the Landlords stated there were no amendments. RP then asked that I amend the Application to remove OC as an applicant. Later in the hearing, OC stated that, although she was not named on page 1 of the tenancy agreement as a tenant, she was listed on page 6 of the tenancy agreement and that she signed the tenancy agreement. It is unclear to me why the Tenants or Landlords did not point this out when I initially inquired about the status of OC as a tenant. However, as OC's status as a Tenant to the tenancy agreement became clear later in the hearing, I did not amend the Application to remove OC as an applicant in the Application.

### Preliminary Matter – Severance and Dismissal of Tenants' Claim

The Application included claims for (i) a monetary order for compensation from the Landlords; (ii) an order to suspend or set conditions on the Landlords' right to enter the rental unit; and (iii) an order for the Landlords to comply with the Act, Regulations and/or tenancy agreement (collectively the Tenants' Other Claims).

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

Rule 2.3 of the Rules states:

#### **2.3 Related issues**

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the Original Hearing, I advised the parties the primary issue in the Landlords' Application was to whether the Tenants were entitled to (i) cancellation of the 10 Day Notice and whether the Tenants were entitled to recover the filing fee for the Application from the Landlords. As such, I severed and dismissed, the Tenants' Other Claims. Whether I dismiss those claims with, or without leave to reapply, will depend upon whether I issue an Order of Possession in favour of the Landlords.

### Issues to be Decided

- Are the Tenants entitled to cancellation of the 10 Day Notices?
- Are the Tenants entitled to recover the filing fee for the Application from the Landlords?
- If the 10 Day Notices are not cancelled, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

MS submitted into evidence a copy of the signed tenancy agreement between the parties dated June 27, 2022. The parties agreed the tenancy commenced on January 1, 2022, on a month-to-month basis, with rent of \$2,100.00 payable on the 1<sup>st</sup> day of each month. The tenancy agreement stated the Tenants were to pay a security deposit of \$2,100.00. At the hearing, the parties agreed that the deposit consisted of \$1,050.00 as a security deposit and \$1,50.00 as a pet damage deposit. MS acknowledged the Tenants paid the security and pet damage deposits and that the Landlords were holding the deposits in trust for the Tenants.

The parties agreed the Landlords served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated May 14, 2022 (First 10 Day Notice). The First 10 Day Notice stated the Tenants had rental arrears of \$1,600.00 and \$880.00 for unpaid utilities. MS stated the First 10 Day Notice was served on the Tenants by registered mail on May 27, 2023. The parties acknowledged they had agreed to cancel the First 10 Day Notice as they had reached a settlement on the unpaid rent and utilities. As such, it is not necessary for me to consider whether the First 10 Day Notice should be cancelled.

The parties agreed the Landlords served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated September 5, 2022 (Second 10 Day Notice). MS stated the Second 10 Day Notice was served on the Tenants in-person on September 5, 2022. The parties acknowledged that the Landlord had, with the consent of the Tenants, cancelled the Second 10 Day Notice. As such, it is unnecessary for me to consider whether the Second 10 Day Notice should be cancelled.

The parties agreed the Landlords served the Tenants with a Tenant Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 16, 2022 (Third 10 Day Notice). MS stated the Landlords served the Third 10 Day Notice on the Tenants' door on November 16, 2022. RP stated acknowledged the Tenants received the Third 10 Day Notice. The Third 10 Day Notice stated the Tenants had rental arrears of \$2,100.00 and \$1,384.17 for unpaid utilities. As noted above, the Landlords were order, pursuant to the Interim Decision, to serve the Spreadsheet on the Tenants and submit them to

the RTB. The Spreadsheets disclose the Tenants owed the Landlords \$13,050.00 for rental arrears as of April 1, 2023 calculated as follows:

<b>Date</b>	<b>Rent</b>	<b>Payments Received</b>	<b>Rental Arrears</b>
February 2, 2022	\$2,100.00	\$2,100.00	\$0.00
March 1, 2022	\$2,100.00	\$2,050.00	\$50.00
April 1, 2022	\$2,100.00	\$2,000.00	\$150.00
May 1, 2022	\$2,100.00		\$2,250.00
May 5, 2022		\$500.00	\$1,750.00
May 21, 2022		\$800.00	\$950.00
June 1, 2022	\$2,100.00		\$3,050.00
June 2, 2022		\$500.00	\$2,550.00
June 2022		\$300.00	\$2,250.00
July 1, 2022	\$2,100.00		\$4,350.00
July 23, 2022		\$2,100.00	\$2,250.00
August 1, 2022	\$2,100.00		\$4,350.00
August 6, 2022		\$300.00	\$4,050.00
August 20, 2022		\$750.00	\$3,300.00
September 1, 2022	\$2,100.00		\$5,400.00
September 8, 2022		\$4,950.00	\$450.00
October 1, 2022	\$2,100.00	\$2,100.00	\$450.00
November 1, 2022	\$2,100.00		\$2,550.00
December 1, 2022	\$2,100.00		\$4,650.00
January 1, 2023	\$2,100.00		\$6,750.00
February 1, 2023	\$2,100.00		\$8,850.00
March 1, 2023	\$2,100.00		\$10,950.00
April 1, 2023	\$2,100.00		\$13,050.00
<b>Total</b>	<b>\$31,500.00</b>	<b>\$18,450.00</b>	<b>\$13,050.00</b>

The Third 10 Day Notice also stated the Tenants owed \$1,384.17 for unpaid utilities. MS admitted the Landlords did not serve a 30 Day Demand on the Tenants requesting payment of the unpaid utilities.

At the Original Hearing, RC stated the payments recorded by the Landlord were inaccurate and that the Tenants paid more rent than the amounts credited by the Landlords. RC stated the Tenants had receipts to prove it. As noted above, the Interim Decision allowed the Tenants to submit any evidence to respond to the Spreadsheets provided by the Landlords. However, the Tenants did not submit copies of any receipts

to support this testimony. RC also stated the Landlords did not always give receipts for the payments of rent. MS stated there were several occasions when RC came to pay the rent and, when she attempted to complete a receipt, RC told her he did not have time to wait. RC stated she nevertheless documented the cash payments when received from the Tenants. When I asked, RC stated the Tenants did not make any emergency repairs for which they were entitled to deduct the costs from the rent nor did the Tenants have an Order from the Director of the RTB that would allow the Tenants to reduce or withhold rent from the Landlords.

### Analysis

I find it important to note that, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties' testimonies, their content and demeanor, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I find the testimony of MS to be credible, forthcoming and persuasive. I find the testimony of RP to be inconsistent, contradictory and self-serving, particularly considering many statements made by RP for which no evidence was submitted, or witnesses called, to corroborate his testimony and submissions.

### **1. Order of Possession**

Sections 46 and 53 of the Act state:

- 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.

MS testified the Landlords served the Third 10 Day Notice on the Tenants' door on November 16, 2022. Pursuant to section 90, I find the Tenants were deemed to have received the 10 Day Notice on November 19, 2022. Pursuant to section 46(4), the Tenants had until November 24, 2022, within which to make an application for dispute resolution to dispute the Third 10 Day Notice. The records of the RTB indicate the Tenants made their application on November 14, 2022. Accordingly, the Application was filed with the RTB within the 5-day dispute period required by section 46(4) of the Act. It is noted that, although the Application was made before service of the Third 10 Day Notice, RP admitted the Tenants made the Application in anticipation of being served with the Third 10 Day Notice by the Landlords.

The Third 10 Day Notice stated the Tenants had rental arrears of \$2,100.00 as of November 16, 2022. The Spreadsheets submitted into evidence by the Landlords indicated the Tenants had rental arrears of \$2,550.00 as of November 1, 2022.

Section 26 of the Act states:

- 26 (1) 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.

Pursuant to section 26(1) of the Act, a tenant must pay rent when it is due whether the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. As such, the Act is unequivocal that a tenant has the obligation to pay rent unless one or more of the following limited circumstances exist when a tenant is not required to pay the rent in full as follows:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.



RP admitted the Tenants did not incur the costs of emergency repairs that may be deducted from the rent pursuant to 33(5) of the Act and did not have a pre-existing order from the Director of the RTB to withhold all or a portion of the rent. The security and pet damage deposits did not exceed the amount allowed by the Act and there was no evidence the rent had increased since the commencement of the tenancy. As such, I find the Tenants did not have any excuse under the Act to withhold the rent under section 26.1 of the Act. RP did not submit any receipts to demonstrate the Tenants paid more rent than the Landlord had credited them for in the Spreadsheets or call any witnesses to support their testimony.

The 10 Day Notice also stated the Tenants owed \$1,384.17 for unpaid utilities. MS admitted the Landlords did not serve a 30 Day Demand on the Tenants requesting payment of the unpaid utilities. Section 46(6) of the Act states:

- 46(6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
  - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As the Landlords did not serve a 30 Day Demand on the Tenants requesting payment of the unpaid utilities, they were entitled to include a claim for the unpaid utilities in the Third 10 Day Notice. As such, I will not consider the unpaid utilities claimed on the Third 10 Day Notice. The Landlords have the option of making a new application for dispute resolution to make a claim for the unpaid utilities.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenants owed the Landlords \$2,550.00 when the Third 10 Day Notice was served on them. As such, I find there was a valid reason for the Landlords serving the Tenants with the Third 10 Day Notice and there is no basis upon which to cancel the Third 10 Day Notice. Accordingly, I dismiss the Application without leave to reapply.

Sections 55(1) and 55(1.1) of the Act state:

- 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 reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. 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 section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenants have not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on May 1, 2023, being the date of the Adjourned Hearing.

## ***2. Monetary Order for Unpaid Rent***

Based on the testimony of GC and the Spreadsheets the Landlords submitted into evidence, I find the Landlords have proven, on a balance of probabilities, that the Tenants had rental arrears of \$13,050.00 that have accrued from May 2022 through to April 2023. The Tenants must compensate the Landlords for this amount. Pursuant to section 55(1.1) of the Act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As such, pursuant to section 55(1.1) of the Act, I must order the Tenants pay the Landlords \$13,050.00 in satisfaction of the rental arrears. Pursuant to section 72(2)(b) of the Act, the Landlords may deduct the Tenants' security and pet damage deposits totaling \$2,100.00 from the rental arrears owed by the Tenants, leaving a balance of \$10,950.00.

### **3. Dismissal of Tenants' Other Claims**

As I have granted the Landlord an Order of Possession, I dismiss, without leave to reapply, the Tenants' claims for an order to suspend or set conditions on the Landlords' right enter the rental unit and an order for the Landlords to comply with the Act, Regulations, and/or tenancy agreement. I dismiss, with leave to reapply, the Tenants' claim for compensation from the Landlord. The Tenants have the option of making a new application for dispute resolution to make a claim for compensation from the Landlords.

#### **Conclusion**

The Tenants' Application is dismissed in its entirety without leave to reapply.

I order that the Tenants deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and attached Order of Possession by the Landlords. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order that the Tenants to pay the Landlords \$10,950.00 representing the following:

<b>Description</b>	<b>Amount</b>
Rental Arrears	\$13,050.00
Less: Security and Pet Damage Deposits	-\$2,100.00
<b>Total</b>	<b>\$10,950.00</b>

It is the Landlords' obligation to serve this Monetary Order on the Tenants. If the Tenants do not comply with the Monetary Order, it may be filed with the Small Claims Division of the Provincial Court 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: May 20, 2023

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Residential Tenancy Branch