



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR

### Introduction

The Tenants applied for dispute resolution (Application) and seek an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act).

The Landlord and one of the Tenants attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. The Landlord was assisted by a translator.

The Tenant testified they served the Notice of Dispute Resolution Package (Materials) on the Landlord on April 24, 2023 via registered mail. The Landlord confirmed receipt of the Materials and raised no issues with service. I find that in accordance with sections 89 and 90 of the Act that Tenants' Materials were sufficiently served to the Landlord.

The Landlord testified they had not served their evidence to the Tenants. As rule 3.15 of the *Rules of Procedure* states that respondent's evidence must be received by the applicants not later than 7 days before the hearing, I exclude the Landlord's evidence from consideration.

### Preliminary Issue: Amendment

The Tenant confirmed their minor children, aged 9 and 14, had been listed as Applicant Tenants on the Application. The Tenant agreed for their children to be removed from the Application. As such, I amend the application accordingly per rule 4.2 of the *Rules of*

*Procedure.* The Tenant also confirmed the correct spelling of the other Tenant's name, and the Application was amended accordingly.

### Issues to be Decided

- 1) Should the Notice be canceled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

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 agreed on the following regarding the tenancy:

- The tenancy began on February 1, 2023.
- Rent is \$2,200.00 per month due on the first day of the month.
- A security deposit of \$1,100.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

The Landlord testified as follows. The Tenants paid the security deposit on January 25 or 26, 2023 and on February 2, 2023 they paid rent of \$1,100.00 to the Landlord. The Tenants asked the Landlord if they could pay \$1,100.00 every two weeks instead of one payment per month. The Landlord agreed to this.

On March 1, 2023 the Tenants paid \$900.00 to the Landlord. The Landlord asked about the rest of the rent and the \$1,100.00 still owing from February and the Tenants said they would pay the arrears by the end of March 2023. At the end of March 2023 there was still no payment from the Tenants and the Landlord asked them about this on April 2, 2023 with no reply. The Landlord asked the Tenants again and still received no reply so served the Notice on April 19, 2023.

A copy of the Notice was entered into evidence by the Tenants. The Notice is dated April 19, 2023 and provides an effective date of April 30, 2023. The outstanding rent is listed as \$4,600.00 as of April 1, 2023.

The Landlord confirmed that no payments have been received from the Tenants since the Notice was issued and the total rental arrears stand at \$9,000.00 as of June 1, 2023.

The Tenant testified as follows. They had tried to reason with the Landlord and ask for an extension to pay rent, but the Landlord would not listen. The Tenant described how their wife had been injured and disability payments were low. The Landlord had also turned off the internet in the rental unit.

The Tenant acknowledged receipt of the Notice on April 19, 2023 to a pre-agreed email for service. The Tenant was unsure of the total amount of rent owing but acknowledged that the payments of \$1,100.00 in February 2023 and \$900.00 in March 2023 were correct. They also acknowledged that no rent payments had been made to the Landlord since the Notice was issued.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include:

- when a tenant has paid a security or pet deposit above the allowed amount;
- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*;
- when a tenant has received a Two Month Notice to End Tenancy for Landlord's Use and they withhold the last month's rent under section 51.4(2) of the Act;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore, I am satisfied that rent in the amount of \$4,600.00 was owing as of April 1, 2023.

The Tenant provided testimony regarding recent events that affected their family which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenant and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Testimony from both the Landlord and the Tenant show that the Tenants did not pay rent on April 1, 2023 and had an outstanding amount owing from February and March 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenants' Application to cancel the Notice is dismissed without leave to reapply.

The Notice was served on April 19, 2023 to a pre-agreed email for service, therefore would have been deemed received on April 22, 2023, the third day after it is sent in accordance with section 44 of the *Residential Tenancy Regulation*. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read May 2, 2023 instead of April 30, 2023.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. The Tenants have two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on May 2, 2023 in accordance with the Notice.

Since the Application relates to a notice to end tenancy under section 46 of the Act, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$9,000.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision.

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenants. The Tenants have two days to vacate the rental unit from the date of service or deemed service. 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.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

<b>Item</b>	<b>Amount</b>
Unpaid rent	\$9,000.00
Less: security deposit	(\$1,100.00)
<b>Total</b>	<b>\$7,900.00</b>

The Landlord is authorized to retain the security deposit.

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: June 14, 2023

---

Residential Tenancy Branch