



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPU, MNRL, FFL

### Introduction

Tenants A to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. They ask me for the following orders against the landlords.

1. Cancel a Notice to End Tenancy for Unpaid Rent [the 'Notice'].
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords also applied for Dispute Resolution, and ask me for the following orders against the tenants A and B.

1. Upholding the Notice, and exclusive possession of the rental unit in favour of the landlords.
2. Payment of \$5,118.00 of unpaid rent.
3. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 26 June 2023. Tenants B also appeared, but Tenants A did not.

### Preliminary Matter - Non-appearance at the Hearing

Tenants A did not attend this hearing of their own application, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and ended about 47 minutes later. I confirmed:

1. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing of the tenants' application; and
2. by reviewing the teleconference system, that the landlords, Tenants B and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Tenants A failed to attend this hearing, but I conducted it in their absence. RTB records satisfied me that Tenants A had notice of this hearing and how to participate.

Issues to be Decided

Should I cancel the Notice?

If not, then do the tenants owe the landlords rent?

Should the tenants or the landlords bear the cost of filing their applications?

Background and Evidence

The landlords told me the following about this tenancy:

1. rent is \$4,000.00 per month, plus utilities, due on the first day of each month;
2. the tenants paid \$4,000.00 in deposits to the landlords on moving in;
3. in April, the tenants paid only \$500.00 for rent;
4. in May, they paid only \$2,500.00;
5. in June, they paid only \$1,700.00;
6. the total rent owing across those three months is \$7,300.00;
7. because of this debt, the landlords personally served the Notice on the tenants on 2 May, claiming \$7,500.00 of unpaid rent due 1 May and \$118.00 of unpaid utilities; and
8. the landlords never issued a demand for the unpaid utilities, thought they knew they were supposed to do so.

Tenants B conceded that neither they or Tenants A paid more than \$4,700.00 of rent between April, May and June, and they do not oppose the landlords' application.

### Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

Section 26 (1) of the *Residential Tenancy Act* [the 'Act'] places a positive obligation upon the tenants to pay rent, with which the tenants have not complied.

The tenants conceded in their evidence that they failed in this obligation, and they have continued to fail in this obligation. As a result, I find that the tenancy is at an end, and that the tenants owe the landlords \$7,300.00 rent.

Section 46 (6) of the Act only permits a landlord to treat unpaid utility charges as unpaid rent if the landlord issues a written demand for payment for them, and then, more than 30 days after giving that demand, the tenants have still not paid the charges. That did not occur in this case, and so the landlords cannot treat the unpaid utilities as rent.

But because the landlords succeeded in their application, I will order that the tenants reimburse the landlords for the cost of filing their application.

### Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I also order that the tenants pay to the landlords \$7,300.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the tenants' deposits of \$4,000.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act, leaving a total of \$3,300.00, plus \$100.00 for the filing fee.

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 Act.

Dated: 27 July 2023

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Residential Tenancy Branch