



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      Tenants: CNL, LRE, FFT | CNR | CNR, LRE  
Landlords: OPR-DR, MNR-DR, FFL

### Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

One of the Tenants, HZ, made applications to:

- cancel a two month notice to end tenancy for landlord's use of property dated April 11, 2023 (the "Two Month Notice") pursuant to section 49 of the Act;
- suspend or set conditions on the Landlords' right to enter the rental unit pursuant to section 70(1) of the Act;
- recover the filing fee pursuant to section 72(1) of the Act;
- cancel a 10 day notice to end tenancy for unpaid rent or utilities dated June 5, 2023 (the "June 10 Day Notice") pursuant to section 46 of the Act; and
- cancel a 10 day notice to end tenancy for unpaid rent or utilities dated July 4, 2023 (the "July 10 Day Notice") pursuant to section 46 of the Act.

One of the Landlords, GW, applied for:

- an order of possession pursuant to section 55 of the Act;
- compensation of \$5,100.00 for unpaid rent pursuant to sections 55 or 67 of the Act; and
- authorization to recover the filing fee pursuant to section 72(1) of the Act.

GW attended this hearing on behalf of the Landlords and gave affirmed testimony.

No one attended this hearing on behalf of the Tenants. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Tenants to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notices of dispute resolution

proceeding. I used the teleconference system to confirm that GW and I were the only ones who had called into the hearing.

#### Preliminary Matter – Service of Dispute Resolution Proceeding and Evidence

GW confirmed that copies of the notice of dispute resolution proceeding package for her application (the “Proceeding Packages”) were sent to the Tenants together with the Landlords’ evidence via registered mail. The Landlords provided tracking numbers in support of service (referenced on the cover page of this decision). Tracking records indicate that the packages were delivered on July 12, 2023. I find the Tenants were served with the Proceeding Packages and the Landlords’ evidence in accordance with sections 88 and 89 of the Act.

GW testified that the Landlords did not receive any documents from the Tenants.

#### Preliminary Matter – Style of Cause

The parties on the tenancy agreement are the Tenants and GW as landlord. GW explained that her mother, JY, is the owner of the rental unit. In the Tenants’ applications, HZ named JY as the sole landlord and respondent. I find that both GW, as a party to the tenancy agreement, and JY, as owner of the rental unit, fall under the definition of a “landlord” under section 1 of the Act. I find that both Tenants have signed the parties’ agreement as tenants. Pursuant to section 64(3)(c) and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), I have amended all four applications heard in this hearing to unify the style of cause and to include each of the Landlords and Tenants as parties.

#### Preliminary Matter – Tenants’ Non-attendance

Rules 7.3 and 7.4 of the Rules of Procedure state:

##### **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.

##### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenants did not attend this hearing to present evidence regarding the merits of their applications. Accordingly I dismiss the Tenants' claims to suspend or set conditions on the Landlords' right to enter the rental unit and to recover their filing fee, without leave to re-apply.

Having found the Tenants to be duly served with the Landlords' application, I directed this hearing to proceed in the Tenants' absence to determine whether the Landlords are entitled to an order of possession, compensation for unpaid rent, and reimbursement of their filing fee.

#### Issues to be Decided

1. Should the Two Month Notice, June 10 Day Notice, and July 10 Day Notice be cancelled?
2. Are the Landlords entitled to an order of possession?
3. Are the Landlords entitled to compensation for unpaid rent?
4. Are the Landlords entitled to recover their filing fee?

#### Background and Evidence

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

This tenancy commenced on July 1, 2020 for a fixed term ending on October 30, 2022, and continued thereafter on a month-to-month basis. Rent is \$1,700.00 due on the first day of each month. The Tenants paid security and pet damage deposits totalling \$1,700.00.

JY issued the Two Month Notice to the Tenants on April 11, 2023, with an effective date of July 1, 2023. The reason for ending the tenancy was for the child of the landlord or landlord's spouse to occupy the rental unit. The Two Month Notice was sent to the Tenants via registered mail and was delivered on April 17, 2023. HZ applied to cancel the Two Month Notice on May 2, 2023.

GW testified that the Tenants did not pay rent of \$1,700.00 due on May 1, 2023. JY issued a 10 day notice for unpaid rent or utilities dated May 5, 2023 (the "May 10 Day Notice") to the Tenants, with an effective date of May 15, 2023. This notice was sent to the Tenants via registered mail and was delivered on May 10, 2023. GW provided the file numbers (referenced on the cover page of this decision) for the parties' applications

with respect to the May 10 Day Notice. GW explained that she withdrew her application due to a misunderstanding that it was not needed due the Tenants having already made an application at the time. GW confirmed that the Tenants then withdrew their application. GW testified that the Tenants did not pay the overdue rent from May 2023.

GW testified that the Tenants also did not pay any of the rent due on June 1 and July 1, 2023. As a result, JY issued the June 10 Day Notice and the July 10 Day Notice to the Tenants in succession. HZ applied to cancel both notices.

The June 10 Day Notice was signed by JY and had an effective date of June 17, 2023. It states that the Tenants failed to pay rent of \$1,700.00 due on June 1, 2023. This notice was sent to the Tenants via registered mail and was delivered on June 14, 2023. HZ applied to cancel this notice on June 19, 2023.

The July 10 Day Notice was issued on July 4, 2023 and delivered to the Tenants via registered mail on July 12, 2023.

GW testified that the Tenants continue to reside in the rental unit and have not paid any rent for August 2023 either.

The Landlords seek an order of possession for the rental unit, unpaid rent for the months of May to August 2023, and reimbursement of their filing fee.

### Analysis

#### *1. Should the Two Month Notice, June 10 Day Notice, and July 10 Day Notice be cancelled?*

I find the Tenants were served with the Two Month Notice on April 17, 2023 and made an application to dispute that notice on May 2, 2023. As such, I find the tenancy was not ended pursuant to the Two Month Notice, which was put on hold pending the outcome of this hearing. I find that in the interim, the Tenants were liable to continue paying rent when due under the tenancy agreement unless otherwise exempted under the Act.

For the reasons given below, I find the June 10 Day Notice should be upheld and the Landlords are entitled to an order of possession of the rental unit based on this notice. Therefore, I do not find it is necessary to address the Tenants' claims to cancel the Two Month Notice or the July 10 Day Notice, and I dismiss those claims without leave to re-apply.

According to section 26(1) of the Act, a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

I have reviewed the June 10 Day Notice and find that it complies with the requirements of section 52 of the Act in form and content. I find the Tenants were served with the June 10 Day Notice on June 14, 2023 in accordance with section 88(c) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment of rent or utilities, or pay the outstanding amount in full, within 5 days of receiving such a notice. I find the application to dispute the June 10 Day Notice was made on June 19, 2023, within the 5-day time limit under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, I accept GW's undisputed testimony that the Tenants have not paid any rent since May 2023, including rent of \$1,700.00 which was due on June 1, 2023. I find there is insufficient evidence to suggest that the Tenants had any legal right under the Act to withhold payment of rent.

I conclude the Landlords have established the grounds for ending this tenancy as stated in the June 10 Day Notice. Accordingly, I dismiss the Tenants' claim to cancel the June 10 Day Notice without leave to re-apply.

*2. Are the Landlords entitled to an order of possession?*

Section 55(1) of the Act states that 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:

- the landlord's notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the June 10 Day Notice to comply with the requirements of section 52 of the Act and having dismissed the claim to cancel the June 10 Day Notice, I find the Landlords are entitled to an order of possession under section 55(1) of the Act.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective two (2) days after service of the Order upon the Tenants.

*3. Are the Landlords entitled to compensation for unpaid rent?*

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

According to Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3"), section 55(1.1) of the Act allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Policy Guideline 3 further states that if the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

Based on the Landlords' undisputed evidence, I am satisfied that as of the date of this hearing, the Tenants owe unpaid rent of \$6,800.00 (or \$1,700.00 × 4 months) to the Landlords for the period from May to August 2023.

Pursuant to section 55(1.1) of the Act, I order the Tenants to pay the Landlords the sum of \$6,800.00 for unpaid rent.

*4. Are the Landlords entitled to recover their filing fee?*

The Landlords have been successful in obtaining an order of possession and compensation for unpaid rent. I grant the Landlords' claim for reimbursement of their filing fee under section 72(1) of the Act.

Conclusion

The Tenants' applications are dismissed in their entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days** after service upon the Tenants. 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 Supreme Court of British Columbia and enforced as an order of that Court.

The Landlords are entitled to compensation of \$6,800.00 from the Tenants for unpaid rent and \$100.00 for reimbursement of the filing fee, for a total of \$6,900.00. Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenants' security and pet damage deposits totalling **\$1,700.00** in partial satisfaction of the amount awarded to the Landlords in this decision.

Pursuant to sections 55(1.1) and 72 of the Act, I grant the Landlords a Monetary Order in the amount of **\$5,200.00** for the balance awarded (\$6,900.00 - \$1,700.00). This Order may be served on the Tenants, filed in 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: August 21, 2023

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Residential Tenancy Branch