



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on September 1, 2023 concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with Legal Counsel, as well as the landlord's spouse and an agent. The landlord's spouse and the landlord's agent each gave affirmed testimony, and the landlord's Legal Counsel was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of his skill and ability.

However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord's spouse testified that the tenant was served with the Notice of Dispute Resolution Proceeding by registered mail on July 6, 2023 and the landlord has provided copies of 2 Canada Post cash register receipts bearing that date and containing tracking numbers. The landlord has also provided 2 Proof of Service documents indicating that the tenants were served on June 6, 2023, which the landlord's Legal Counsel submitted is an error.

I have reviewed the documentation, and I am satisfied that the tenants were served on July 6, 2023, in accordance with the *Residential Tenancy Act*.

The tenants have provided a copy of a Proof of Service Notice of Dispute Resolution Proceeding package quoting this file number, but it names 2 respondents who are not

related to this application. Since the tenants have not joined the hearing to provide any testimony of what was served, that evidence is not considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's spouse** (XXM) testified that this fixed term tenancy began on February 1, 2023 and expires on January 31, 2024, and the tenants still reside in the rental unit. Rent in the amount of \$3,600.00 is payable on the 1<sup>st</sup> day of each month. On January 20, 2023 the landlord collected a security deposit from the tenants in the amount of \$1,800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's spouse further testified that the tenants have failed to pay any rent for the months of May, June, July or August, 2023, and rent is due again today, for a total of \$18,000.00 in arrears.

The tenants have not served the landlord with an Application for Dispute Resolution, or a Notice of Dispute Resolution Proceeding.

**The landlord's agent** (LS) testified that on May 16, 2023 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants, who signed the Notice. A copy has been provided for this hearing and it is dated May 16, 2023 and contains an effective date of vacancy of May 26, 2023 for unpaid rent in the amount of \$3,600.00 that was due on May 15, 2023.

### Analysis

The *Residential Tenancy Act* specifies that rent must be paid when it is due in accordance with the tenancy agreement. I accept the undisputed testimony of the

landlord's spouse and the landlord's agent that the tenants have not paid any rent for the months of May, 2023 to September, 2023 inclusive and are in arrears the sum of \$18,000.00.

I have also reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The law requires a tenant to pay the rent within 5 days of receiving the Notice or dispute it within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

I accept the testimony of the landlord's agent that the Notice was served personally on May 16, 2023 and the tenants have not paid the rent in full or disputed the Notice, and arrears have continued to accumulate. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an order of possession. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenants. The tenants must be served with the order of possession, which may be filed in the Supreme Court of British Columbia for enforcement.

I further order the landlord to keep the \$1,800.00 security deposit in partial satisfaction of the claim, and I find that the landlord has established a monetary claim for the difference, in the amount of \$16,200.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I therefore grant a monetary order in favour of the landlord as against the tenants in the amount of \$16,300.00. The tenants must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenants.

I further order the landlord to keep the \$1,800.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$16,300.00.

This order is final and binding and may be enforced.

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: September 01, 2023

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Residential Tenancy Branch