



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

<b><u>Dispute Codes</u></b>	Landlord:	OPR-DR, MNR-DR, FFL
	Tenant:	CNR, CNC, MNRT, OLC, FFT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlords' Application for Dispute Resolution was made on October 11, 2023. The Landlords applied for the following relief, pursuant to the Act:

- an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 2, 2023 (the 10 Day Notice);
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants' Application for Dispute Resolution was made on September 26, 2023, and was amended on October 12, 2023. The Tenants applied for the following relief, pursuant to the Act:

- an order cancelling the 10 Day Notice; and
- an order cancelling a One Month Notice to End Tenancy for Cause, dated September 18, 2023 (the One Month Notice);
- an order requiring the Landlords to reimburse the Tenants for the cost of emergency repairs made during the tenancy;
- an order that the Landlords comply with the Act, Residential Tenancy Regulation (the Regulations), and or the tenancy agreement; and
- an order granting recovery of the filing fee.

Rule of Procedure 2.3 permits an arbitrator to dismiss unrelated claims with or without leave to reapply. In this case, the most pressing issues to address relate to the notices to end tenancy and whether or not the tenancy will continue. These are unrelated to the Tenants' claim for monetary relief. Accordingly, the parties were advised that I would exercise my discretion to dismiss the Tenants' claim for monetary relief and for an order that the Landlords comply with the Act, Regulations and/or the tenancy agreement, with leave to reapply as appropriate. However, in light of my findings below, I find that only the Tenants' request for monetary relief is dismissed with leave to reapply. The Tenants request for an order that the Landlords comply with the Act, Regulations, and/or the tenancy agreement is dismissed without leave to reapply.

The Landlords attended the hearing on their own behalf. BJF attended the hearing on behalf of the Tenants. All in attendance provided affirmed testimony.

On behalf of the Landlords, SA testified the Notice of Dispute Resolution Proceeding package relating to the Landlords' application was served on the Tenants by registered mail. The tenant acknowledged receipt. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

On behalf of the Tenants, BJF testified the Notice of Dispute Resolution Proceeding package relating to the Tenants' application was served on the Landlords by email and registered mail. Landlords acknowledged receipt of the Notice of Dispute Resolution Proceeding documents but not of the Tenants' evidence. Accordingly, I find I am not satisfied the Landlords were served with the Tenants' documentary evidence. It has not been considered further in this decision.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Landlords entitled to an order of possession?
2. Is the Landlords entitled to a monetary order for unpaid rent?
3. Is the Landlords entitled to recover the filing fee?
4. Is the Tenants entitled to an order cancelling the 10 Day Notice?

5. Is the Tenants entitled to an order cancelling the One Month Notice?
6. Is the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed the tenancy began on August 1, 2023. Rent in the amount of \$2,850.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,425.00, which the Landlords hold. A copy of the signed tenancy agreement was submitted into evidence.

The Landlords testified the Tenants did not pay rent when due on October 1, 2023. Accordingly, the Landlords issued the 10 Day Notice. At that time, rent of \$2,850.00 was unpaid. A copy of the 10 Day Notice was submitted into evidence.

The Landlords testified the 10 Day Notice was served on the Tenants by email on October 2, 2022. RJF acknowledged receipt of the 10 Day Notice on October 3, 2023. The Landlords testified that the Tenants did not pay rent on November 1, 2023, and that \$5,700.00 remains unpaid.

In reply, RJF did not dispute that rent has not been paid as alleged. He testified there have been a number of issues with the Landlord. For example, RJF testified that the Landlord implemented a \$50.00 per day penalty for late payment of rent. The Landlords acknowledged this was in the tenancy agreement and that only \$450.00 has been charged to the Tenant for late payment in August 2023.

In addition, RJF testified that the Landlords reneged on an agreement to accept e-transfers for rent which required him to travel into downtown Vancouver carrying thousands of dollars in cash. RJF also testified that the Landlord has not provided rent receipts. Further, RJF testified that the Tenants noticed a crack in the ceiling and that the Landlords have not allowed them to repair it. The Tenant also claimed that his spouse has a disability and that the railings are not sufficiently secured. Finally, RJF testified that the Landlords have accused the Tenants of having a pet in the house, which is untrue.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations, and/or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act confirms a Landlords may take steps to 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 Tenants receives the notice.

The Landlords sought an order of possession. In this case, I find that the 10 Day Notice was received by the Tenants on October 3, 2023. Further, based on the evidence of both parties, I find the Tenants did not pay rent when due in accordance with the tenancy agreement or within five days after receipt of the 10 Day Notice. Therefore, I find the Landlords have established an entitlement to an order of possession which will be effective two days after it is served on the Tenants.

In addition, based on the evidence of the parties, I find the Tenants did not pay rent when due on October 1 and November 1, 2023. Therefore, I find the Landlords have established an entitlement to recover unpaid rent of \$5,700.00.

However, fees for the late payment of rent are permitted only under section 7 of the Regulations. These fees are not to exceed \$25.00 per late payment, not per day. In order to charge a \$25.00 fee for the late payment of rent, the tenancy agreement must provide for the fee. In this case, I find the tenancy agreement submitted into evidence does not provide for a fee as set out in section 7 of the Regulations. Rather, I accept that the tenancy agreement provides for a daily penalty of \$50.00, which is not permitted under the Act or the Regulations. I accept that the Landlords have charged the Tenants penalties totalling \$450.00, contrary to the Act and the Regulations. Accordingly, I credit this amount to the award for unpaid rent and find the Landlords are entitled to a monetary award \$5,250.00 for unpaid rent (\$5,700.00 - \$450.00).

Having been successful, the Landlords are also entitled to recover the \$100.00 filing fee paid to make the Application. I also find it is appropriate in the circumstance to order that the Landlords are authorized to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I grant the Landlords a monetary order in the amount of \$3,925.00, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Unpaid rent:	\$5,250.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,425.00)
<b>TOTAL:</b>	<b>\$3,925.00</b>

### Conclusion

The Landlords are granted an order of possession, which will be effective two days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$3,925.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The following requests made by the Tenants are dismissed without leave to reapply:

- an order cancelling the 10 Day Notice; and
- an order cancelling the One Month Notice; and
- an order granting recovery of the filing fee.

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: November 24, 2023

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Residential Tenancy Branch