



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT  
                             OPU-DR, MNU-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application. The landlord has applied by way of the Direct Request process for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants, which was referred to this participatory hearing, joined to be heard with the tenants' application.

Both tenants and the landlord attended the hearing, and the landlord was assisted by an agent who also gave witness testimony. The landlord and one of the tenants also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing, the tenant indicated that none of the landlord's evidence was provided to the tenant, which was disputed by the landlord. The landlord's witness testified that the evidence was provided to the tenant by taping the documents to the tenants' door on November 3, 2023 at 7:30 p.m. The landlord agrees that the tenants' evidence was received by the landlord by registered mail. I made a finding that all evidence was sufficiently served, and all evidence provided has been reviewed and the evidence I find relevant to the applications is 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*, or should it be cancelled?

- Has the landlord established a monetary claim as against the tenants for unpaid rent?

### Background and Evidence

**The landlord's agent** is a real estate agent and testified that this month-to-month tenancy began on October 24, 2022 and the tenants still reside in the rental unit. Rent in the amount of \$2,800.00 is payable on the 1st day of each month. The tenancy agreement, a copy of which has been provided for this hearing indicates a security deposit and a pet damage deposit in the amount of \$1,400.00 each, but the landlord's agent does not know if they were paid to the landlord or not. The rental unit is a townhouse unit.

The landlord's agent further testified that on October 13, 2023 the tenants were served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by posting it to the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated 10/13/2023 and contains an effective date of vacancy of 31/10/2023 for unpaid rent in the amount of \$30,000.00 that was due on October 1, 2023. The tenants made a partial rent payment in November, 2022 but nothing for the months of December, 2022 to date with the exception of a partial payment in October, 2022. The landlord's agent does not know how much was paid or when.

**The landlord** testified that the tenants moved into the rental unit in October, 2022 and paid full rent for November, 2022. In each of the months of December, 2022 and January through July, 2023 the tenants paid \$800.00. No rent has been paid for August, 2023. In September, 2023 the tenants paid \$600.00, and in October, 2023 the tenants paid \$450.00 saying they would start paying bi-weekly, but that didn't happen. No rent has been paid for the month of November, 2023.

The landlord did not collect a security deposit or a pet damage deposit from the tenants, but the tenants paid the utilities.

The landlord has also served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property, and testified that the rental home has been sold.

**The tenant** testified that the tenants are not trying to dodge their responsibilities, but the tenant was on welfare and paid what the tenants could. The tenant found a part-time job and applied for a line of credit. The tenant was sick with COVID and then got shingles.

The tenant disagrees with the landlord's statement that the security deposit and pet damage deposit were not paid, but were paid on October 24, 2022. All transactions were completed in cash and the tenant has a receipt with the landlord's signature for \$2,800.00 dated October 26, 2022 in the amount of \$2,800.00 for the security deposit and pet damage deposit. The tenants also paid \$800.00 on November 30, 2022.

The landlord only wanted to deal with cash, including rent, and the tenant put it in the mailbox and would send a message to the landlord.

The tenant also disputes the landlord's testimony that rent for August wasn't paid; the tenants paid \$800.00.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have 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*. Once served, the tenant has 5 days to pay the rent in full. There is no question that rent has not been paid in full, and therefore, I dismiss the tenants' application without leave to reapply. I also find that the landlord has established a claim for 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.

The *Residential Tenancy Act* also states that a tenant must pay rent when it is due under the tenancy agreement. In this case, the tenants do not dispute that only partial payments have been made to the landlord. I have reviewed all of the evidentiary material of the parties, which includes a receipt dated October 26, 2022, marked "Rent." The evidence of the landlord also includes a receipt dated December 21, 2022 for \$800.00, also marked "Rent." No other receipts have been provided.

The landlord testified that the tenants didn't pay a security deposit or pet damage deposit, which is disputed by the tenants. The landlord's agent testified that the tenancy began on October 24, 2022, and therefore the tenants ought not to have paid \$2,800.00 for that month, and since the receipt provided is clearly marked "Rent," I find that the payment of \$2,800.00 on October 26, 2022 was for the rent for the following month, November, 2022, and the landlord did not collect a security deposit or pet damage

deposit. There is no evidence before me that, since rent is payable on the 1<sup>st</sup> day of each month, that the landlord charged any rent or pro-rated amount of rent for the first partial month of the tenancy.

The landlord also testified that the tenants didn't pay full rent for In each of the months of December, 2022 and January through July, 2023 but the tenants paid \$800.00 for each of those months. No rent has been paid for August, 2023. In September, 2023 the tenants paid \$600.00, and in October, 2023 the tenants paid \$450.00. No rent has been paid for November, 2023. The tenant testified that a partial payment of rent for August, 2023 was made in the amount of \$800.00. The tenant also testified that the tenants paid an additional \$800.00 on November 30, 2022 and the landlord's agent testified that a partial payment was made in November, 2022.

The onus is on the landlord to establish the amount of the unpaid rent. In the absence of any evidence to prove the tenant's testimony is incorrect, I find that the partial payment of \$800.00 was paid on November 30, 2022, which is not calculated in the landlord's claim. The landlord has not provided a tenant ledger showing the amounts due and paid, and I accept the testimony of the tenant that \$800.00 was paid for August, 2023.

In the testimony and evidence provided by the parties, I find that the landlord has established a claim for unpaid rent as follows:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
November 1, 2022	Rent Due	\$2,800.00	\$2,800.00	\$0
November 30, 2022	Payment		\$800.00	(\$800.00)
December 1, 2022	Rent Due	\$2,800.00	\$800.00	\$1,200.00
January 1, 2023	Rent Due	\$2,800.00	\$800.00	\$3,200.00
February 1, 2023	Rent Due	\$2,800.00	\$800.00	\$5,200.00

March 1, 2023	Rent Due	\$2,800.00	\$800.00	\$7,200.00
April 1, 2023	Rent Due	\$2,800.00	\$800.00	\$9,200.00
May 1, 2023	Rent Due	\$2,800.00	\$800.00	\$11,200.00
June 1, 2023	Rent Due	\$2,800.00	\$800.00	\$13,200.00
July 1, 2023	Rent Due	\$2,800.00	\$800.00	\$15,200.00
August 1, 2023	Rent Due	\$2,800.00	\$800.00	\$17,200.00
September 1, 2023	Rent Due	\$2,800.00	\$600.00	\$19,400.00
October 1, 2023	Rent Due	\$2,800.00	\$450.00	\$21,750.00
November 1, 2023	Rent Due	\$2,800.00	\$0	\$24,550.00

I find that the landlord has established a claim for unpaid rent in the amount of \$24,550.00.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

I grant a monetary order in favour of the landlord as against the tenants in the amount of \$24,650.00. The tenants must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenants.

I further 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 \$24,650.00.

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 27, 2023

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Residential Tenancy Branch