



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1245948 BC LTD.  
and [Tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNMN, LRE, LAT, OLC, FFT, OPR-DR, MNR-DR, FFL

### Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenants on October 5, 2023, and an Application filed by the Landlord on October 13, 2023.

The Tenants applied:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord applied:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Issue(s) to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid?
2. Are the Tenants entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?
3. Are the Tenants entitled to authorization to change the locks to the rental unit?
4. Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?
5. Are the Tenants entitled to recover the filing fee for this application from the Landlord?
6. Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
7. Is the Landlord entitled to a Monetary Order for unpaid rent?
8. Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that the Landlord was not served in accordance with section 89(1) of the Act.
- I find that Tenant M.G. and Tenant N.J. were served on October 19, 2023, by registered mail in accordance with section 89(1) of the Act, and deemed to have received it on October 24, 2023, the fifth day after the registered mailing under section 90 of the Act. The Landlord provided copies of the Canada Post Customer Receipts containing the tracking numbers to confirm this service.

Service of Evidence

- Based on the submissions before me, I find that the Tenants' evidence was not served to the Landlord in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by the parties indicates that the tenancy began on April 1, 2021, with a monthly rent of \$2,850.00 due on the first of each month. A deposit of \$1,425.00 was paid. The Tenants moved out of the rental unit on October 14, 2023.

According to the Landlord, a 10 Day Notice was posted on the Tenants door on October 4, 2023, for \$19,950.00 in unpaid rent plus \$125.00 per day in late fees. The Tenant and Landlord both provided a copy of the 10 Day Notice.

The Tenant testified that he attempted to pay his March 2023 rent by e-transfer as usual but his transfers kept bouncing back. He stated that he attempted to contact the Landlord by email and telephone but the Landlord's number kept changing and he did not receive a response. He stated that he started receiving notices regarding the unpaid rent in March and April 2023 from the Landlord's property manager and lawyer but stopped trying to send rent payments after April 29, 2023 because his payments kept being returned unclaimed and he had not received a response to his emails or telephone calls from the Landlord.

The Landlord testified that the Tenants' e-transfers for the March 2023 rent payment were cancelled on three occasions each time he attempted to receive them. He stated that he has not changed his telephone number or email address and lives in Kelowna.

Both parties agreed that no rent has been paid by the Tenants for the rental period March 1, 2023 to October 14, 2023.

### Analysis

#### **Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?**

Under section 46(4) of the *Act*, a Tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

The Tenant's application for dispute resolution on October 6, 2023, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the *Act*, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the *Act*.

Relying on the testimony of both parties, I find that the Tenants did not pay the arrears and rent due on October 9, 2023, and that the Landlord therefore had a valid reason for issuing the notice.

For the above reason, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under section 46 of the Act is dismissed, without leave to reapply.

**Are the Tenants entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?**

This issue was not adjudicated. The Tenants have moved out of the rental unit and the tenancy has ended, therefore this issue is not longer relevant.

The Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed without leave to reapply.

**Are the Tenants entitled to authorization to change the locks to the rental unit?**

This issue was not adjudicated. The Tenants have moved out of the rental unit and the tenancy has ended, therefore this issue is not longer relevant.

The Tenant's application for authorization to change the locks on the rental unit is dismissed without leave to reapply.

**Are the Tenants entitled to an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement?**

This issue was not adjudicated. The Tenants have moved out of the rental unit and the tenancy has ended, therefore this issue is not longer relevant.

The Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement is dismissed without leave to reapply.

**Are the Tenants entitled to recover the \$100.00 filing fee?**

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?**

This issue was not adjudicated. The Tenants have moved out of the rental unit and the tenancy has ended, therefore this issue is not longer relevant.

The Landlords application for an Order of Possession is dismissed without leave to reapply.

**Is the Landlord entitled to a Monetary Order for unpaid rent?**

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence submitted and the testimony of both parties, I find that the Landlord has substantiated their claim for unpaid rent for March to October 14, 2023.

I hereby grant the Landlord a monetary award in the amount of \$21,237.10 for unpaid rent under section 55(4)(b) of the Act. The Landlord is ordered to keep the Tenants' security deposit in the amount of \$1,451.51, including interest, in partial satisfaction of the unpaid rent under section 38(4) of the Act.

I find that the Landlord's request for late fees in the amount of \$125.00 per day constitutes an unconscionable term under section 6 of the Act and *Residential Policy Guideline 8* as it is grossly unfair to one party and is therefore not enforceable.

**Is the Landlord entitled to recover the \$100.00 filing fee?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is granted.

The Landlord's application for an Order of Possession is dismissed without leave to reapply.

I grant the Landlords a Monetary Order in the amount of **\$19,885.59** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 55 of the Act	\$21,237.10
authorization to keep the Tenants' security deposit including interest under section 38(4) of the Act	-\$1,451.51
a reimbursement of the filing fee under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$19,885.59</b>

The Landlords are provided with this Order in the above terms and 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed without leave to reapply.

The Tenant's application for authorization to change the locks on the rental unit is dismissed without leave to reapply.

The Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement is dismissed, without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

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: December 12, 2023

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Residential Tenancy Branch