



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNOP, CNMN, OLC, FFT, OPR, MNRL-S, MNDCL-S, FFL

### Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenants on October 1, 2023, and an Application filed by the Landlord on October 10, 2023.

The Tenants applied:

- For cancellation of the 10 Day Notice to End Tenancy
- For the Landlord to comply with the Act, regulation and/or the tenancy agreement
- To recover the Application filing fee

The Landlord applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on September 28, 2023
- For a Monetary Order for unpaid rent
- Compensation for monetary loss or other monies owed
- To recover the Application filing fee

### Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord G.R. was served on October 20, 2023, in accordance with section 89(1) of the Act.
- I find that Tenant K.K. and Tenant R.K. were served on October 11, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenants provided a copies of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was 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.

#### Issue(s) to be Decided

1. Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Are the Tenants entitled to an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement?
3. Are the Tenants entitled to recover the filing fee?
4. Is the Landlord entitled to an Order of Possession based on the Notice?
5. Is the Landlord entitled to a Monetary Order for unpaid rent?
6. Is the Landlord entitled to compensation for monetary loss or other monies owed?
7. Is the Landlord entitled to recover the filing fee?

#### 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, 2022, with a monthly rent of \$1,500.00 due on the first of each month. A deposit of \$750.00 was paid.

According to the Landlord representative D.R., a 10 Day Notice was posted on the Tenants door on September 28, 2023, for \$4,500.00 in unpaid rent. The Tenant and Landlord both provided a copy of the 10 Day Notice. Landlord representative D.R. further testified that the Tenants, in addition to the arrears for July to September 2023, have also not paid rent for October or November 2023.

The Tenants testified that a 2 Month Notice was issued to them by the Landlord by email on May 27, 2023. A copy of the May 27, 2023, email was provided which indicated that the Landlord was giving notice to end tenancy so that his daughter and boyfriend could be occupying the suite on August 1, 2023. The email did not include a formal RTB-32, 2 Month Notice to End Tenancy.

The Tenants further testified that based on this email they reached an agreement with the Landlord to retain their security deposit as half of the rent owing for June 2023 and that they would pay the balance for the month and that July 2023 would be free in accordance with the 2 Month Notice.

The Tenants testified that the Landlord subsequently changed his mind and asked to cancel the 2 Month Notice on June 2, 2023, because he felt bad and offered to let them stay for six months free beginning July 2023 to which they accepted. According to the Tenants the Landlord never spoke to them about rent or raised the issue with them until September 28, 2023, when the 10 Day Notice was posted on their door.

Landlord representative D.R. confirmed that her father had emailed the Tenants about ending the tenancy at the end of July 2023 so her and her boyfriend could move in but stated that no formal 2 Month Notice had been issued and she subsequently changed her mind. She stated that her father asked the Tenants for the rent payments for July to September 2023 verbally and by text messages a number of times before issuing the 10 Day Notice.

### 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 1, 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 September 1, 2023, and that the Landlord therefore had a valid reason for issuing the notice.

I find that the Landlord did not issue a 2 Month Notice in compliance with sections 49 and 52 of the Act therefore the notice was of no effect and the tenancy continued based on the tenancy agreement signed by both parties which required rent to be paid in full and on time for each month in which the Tenants occupied the rental unit as per section 26 of the Act.

I further find, based on the evidence provided, the testimony of the parties and on the balance of probabilities that the Tenants testimony that the Landlord offered to allow them to stay for six months free because he felt bad about issuing notice to end the tenancy to not be credible. I find that the Tenants have not provided proof that such a conversation took place or a rationale as to why the Landlord would forgo rent when remuneration for use of property is the fundamental purpose for which a tenancy agreement exists.

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 for the Landlord to comply with the Act, regulation and/or the tenancy agreement?**

This issue was not adjudicated. As the Tenants' have been unsuccessful in their application to cancel the 10 Day Notice, 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?**

Section 55 of the Act states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
  - a) the landlord's notice to end tenancy complies with section 52, and

- b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlord complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the Act.

The Tenant's application to dispute the Notice has been dismissed.

The Landlord's application for an Order of Possession is hereby granted under section 55 of the Act. Based on the length of tenancy, the time of year, conditions in the rental market and impact on minor occupants, I set the effective date of the Order at 1 pm on December 31, 2023.

### **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 July to November 2023.

I hereby grant the Landlord a monetary award in the amount of \$7,500.00 for unpaid rent under section 55(4)(b) of the Act.

### **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.

I grant an Order of Possession to the Landlords **effective 1 pm on December 31, 2023, after service of this Order on the Tenants**. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlords a Monetary Order in the amount of **\$7,600.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 55 of the Act	\$7,500.00
a reimbursement of the filing fee under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$7,600.00</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 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 06, 2023

---

Residential Tenancy Branch