



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL  
                                CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by 2 tenants.

The landlords have applied as against 1 tenant for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

Two tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Both landlords and both tenants attended the hearing, and one of the landlords and one of the tenants gave affirmed testimony. The landlords also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords 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?
- Have the landlords established a monetary claim as against the tenant(s) for unpaid rent?

### Background and Evidence

**The landlord** (MWM) testified that this fixed-term tenancy began on August 15, 2023 and is to revert to a month-to-month tenancy after September 1, 2024, and the tenant still lives in the rental unit. A copy of the tenancy agreement has been provided for this hearing which names 2 tenants (TA and SH)). Rent in the amount of \$2,600.00 is payable on the 1<sup>st</sup> day of each month. On August 10, 2023 the landlords collected a security deposit from the tenants in the amount of \$1,300.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment suite, and the landlords do not live on the property.

The landlord further testified that on January 10, 2024 the landlords served the tenants with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by serving one of the tenants in person, with a witness. A copy of the Notice has been provided for this hearing and it is dated January 9, 2024 and contains an effective date of vacancy of January 20, 2024 for unpaid rent in the amount of \$2,600.00 that was due on January 1, 2024. No rent has been paid since the Notice was issued. The landlords have also provided a summary of payments made and owed.

The landlord agreed to pay for movers and paid for it on his Visa, but cancelled it on moving day because the tenant said she wasn't moving. The tenant wanted the landlord to deposit the \$2,500.00 into the tenant's account, but the landlords did not agree to that, only to pay the movers directly. A copy of an agreement in writing has been provided for this hearing, indicating that the landlord will pay the tenant \$2,500.00 to help in moving expenses and vacating the rental unit on January 31.

The landlords have also provided a Direct Request Worksheet indicating that \$1,280.00 is outstanding for rent for December 1, 2023 and \$2,600.00 for January 1, 2023. I accept that to be a typing error, however, the amount of the claim is \$3,880.00, not \$9,100.00.

**The landlord's witness** is a police officer and the common-law spouse of one of the named landlords, and the other named landlord is her father.

The witness was made aware that the tenants were renting property from August, 2023. The tenancy was going absolutely fine until the landlord (MWM) learned that full rent wasn't being paid. The landlord attempted to solve the issue through multiple text messages, and the witness has seen the landlord offer multiple gestures, including movers, air conditioning and offered to forgive rent for January and February if the tenants were willing to move out and would give back the security deposit if there were no damages. For several months rent has not been paid and the tenants now owe

\$9,100.00. No rent was paid for January or February, 2024, however the tenant offered that the landlords may keep the security deposit. The tenants changed the date for rent to be paid and it got confusing very fast because rent wasn't paid on time.

**The tenant** (TA) testified that the second named tenant in the tenancy agreement did not move into the rental unit, but another person (DM) did move in.

The Notice was given because one of the landlords wants to move into the suite, which is indicated in the tenancy agreement. The tenant was under the impression that since the landlord was moving in the landlord would have to pay 1 months rent to the tenants. Then the landlord wanted to make an agreement for the tenants to leave with about 5 days notice.

The 10 Day Notice says the tenants failed to pay \$3,880.00, not \$9,100.00. The tenant believed 1 month of rent would be free, and the landlord said he would contribute to the move but cancelled the movers.

#### SUBMISSIONS OF THE LANDLORD (MWM):

The landlord tried to help the tenant out.

#### SUBMISSIONS OF THE TENANT:

If the landlords had followed through with payment for movers, the tenants would be out by now.

#### Analysis

Firstly, 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, and I find that it is in the approved form, but does not indicate the address of the rental unit, but an address of the tenants, which is the address of the rental unit.

The law also states that if a tenant pays the rent in full within 5 days of receiving the Notice, the Notice is of no effect.

I have also reviewed the tenancy agreement, which contains an error that has caused some confusion. Where a landlord wishes to move into a rental unit that is occupied by a tenant, the landlord must serve a Two Month Notice to End Tenancy For Landlord's Use of Property and must provide compensation to the tenant in the equivalent of 1 month's rent payable under the tenancy agreement, which is deemed to be moving expenses for the landlord requiring the tenant to move out.

In this case, the landlords did not give a Two Month Notice to End Tenancy For Landlord's Use of Property. However, the tenancy agreement shows that the tenancy began on August 15, 2023 and continues until September 1, 2024 and at the end of this time, the tenancy continues on a month-to-month basis, or another fixed length of time. However, it also states: "Reason tenant must vacate (required): family moving in or selling of property." That is not a Two Month Notice to End Tenancy For Landlord's Use of Property and therefore, the landlord was not required to provide any compensation to the tenants. The tenancy agreement is for a fixed term commencing August 15, 2023 and ending on September 1, 2024 and then reverts to a month-to-month tenancy.

A tenant is required to pay rent when it is due, which in this case is \$2,600.00 due on the 1<sup>st</sup> day of each month. The tenant does not dispute that rent for January, 2024 was not paid. However, I also note some inconsistencies in the landlords' evidentiary material. The Notice to end the tenancy states that the tenants failed to pay rent in the amount of \$2,600.00 that was due on January 1, 2024. The Direct Request Worksheet states that the tenants failed to pay \$1,280.00 for December, 2023 rent and \$2,600.00 for January rent for a total of \$3,880.00 outstanding. The summary of payments indicates \$9,100.00 is owed.

I have also reviewed all of the text messages exchanged, most of which are not relevant. On December 1 the tenant advised the landlord by text that the tenant still owed \$135.00 which was acknowledged by the landlord as correct. That amount was paid on or about December 8, 2023. The messages also indicate that the landlord was willing to forgive some overdue rent if the tenants vacated, but the tenants did not vacate.

Considering the evidence, I find that the tenants owe rent for the months of January and February, 2024 in the total amount of \$5,200.00.

Having found that the tenants have not paid the rent, and had no legal right to withhold rent, I find that the landlords are 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.

Since the landlords have been successful with the application the landlords are also entitled to recover the \$100.00 filing fee from the tenants.

I grant a monetary order in favour of the landlords as against the tenants in the amount of \$5,300.00. 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.

The tenants' application is hereby dismissed without leave to reapply.

The landlords hold a security deposit but have not made an application to keep it. Therefore, I order that the parties deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,300.00.

I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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: February 22, 2024

---

Residential Tenancy Branch