



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

<b><u>Dispute Codes</u></b>	For the landlord:	OPR, MNR,
	For the tenant:	CNR

### **Introduction**

This hearing convened as a result of the landlord's application for dispute resolution filed on January 14, 2024, seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant; and
- a monetary order for unpaid rent.

This dispute began as an application via the ex-parte, non-participatory Direct Request proceeding and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated January 30, 2024, which should be read in conjunction with this decision.

Afterwards, the tenant filed an application for dispute resolution on January 30, 2024, completed by February 6, 2024, for an order cancelling the 10 Day Notice issued by the landlord, which the Residential Tenancy Branch (RTB) then scheduled their application as a cross application to the ongoing dispute.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord testified that each tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail. The landlord filed the Canada Post receipts showing the tracking number as proof of service and the tenants confirmed receipt of the proceeding package.

Preliminary and Procedural Matters-

*Service of the tenant's application for dispute resolution, evidence, and notice of hearing (proceeding package) –*

As to the tenant's application, the tenant could not provide proof of service of their application for dispute resolution, evidence, and notice of hearing (proceeding package), despite being given every opportunity at the hearing. Although the tenant provided a Canada Post tracking number, the mail associated with that tracking number was sent on December 27, 2023. As the tenant did not complete their application until February 6, 2024, I find there was no proof of service of the tenant's proceeding package to the landlord.

For this reason, I **dismiss** the tenant's application, without leave to reapply. For this reason, I also exclude the tenant's evidence from consideration for the purpose of making this Decision.

Even had I not dismissed the tenant's application due to insufficient evidence that they served the landlord with their application and evidence, I would still have dismissed their application as it was made well after the effective date of the 10 Day Notice, or January 7, 2024.

*Technical difficulties -*

After 46 minutes into the 1 hour hearing, technical difficulties occurred such that I could not hear from the landlord. The conference hearing view showed that the landlord was still connected to the hearing. I repeatedly informed the landlord that I could not hear them and suggested they may be on mute. I also repeatedly told the landlord to disconnect from the hearing and dial back in. Both of these requests continued for approximately 9 minutes. During this time, the landlord appeared to stay connected to the hearing, but I could not hear them.

I informed the tenant that I would have to adjourn the hearing as the landlord was not able to further participate to provide further evidence to support their application. However, after further review of the testimony already given by the landlord and the evidence filed, I determined that I could proceed with part of the landlord's application. I find it unreasonable to not consider the landlord's request for an order of possession of the rental unit and at least part of their claim for a monetary order for unpaid rent. The

tenant did not file their application until long after the effective date of the Notice and there was insufficient evidence that they served their application to the landlord. Further, the tenant did not provide evidence that they paid any of the monthly rent claimed by the landlord.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and a monetary order for unpaid rent?

#### Background and Evidence

Evidence taken at the hearing, by way of testimony and evidence, shows that a written tenancy agreement was signed showing WL as the landlord and SB and PE as tenants, for a tenancy start date of December 1, 2015, and monthly rent of \$1600. On December 9, 2015, the parties, along with tenant, RF, signed an addendum to the tenancy, in which the tenants moved upstairs, and agreed to pay a monthly rent of \$1800, and along with an agreement to manage, repair, and maintain and upkeep the house at their own expense instead of paying \$2000 per month.

The landlord, JL, father of WL, testified that these tenants rented the lower portion of the of the home to students as their sub-tenants and that the monthly rent for each rental unit, the upper and lower, was \$1800 each. SB denied the students were their tenants, they only collected the monthly rent from the students and then paid the funds to JL.

Further testimony at the hearing was taken, in which I heard that, SB's son, WB, moved into the lower unit 4 months earlier and became a sub-tenant of SB and RF, paying rent to the tenants.

WB stated when they first moved in, it was to the upstairs unit with their mother then moved downstairs and obtained roommates.

The landlord testified that they served the tenants the 10 Day Notice by dropping the document in the mailbox, by posting it on the door, and then by registered mail on December 27, 2023, where RF signed for the package, on December 28, 2023. The Notice was dated December 27, 2023, for an effective move-out date of January 7, 2024, listing unpaid rent of \$14,780.82 and unpaid utility charges of \$1083.71. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent. In their application, the landlord wrote the following:

*The last rent payment was \$1,100 on Nov 3, 2023, the rent balance after the \$1,100 payment was still at \$7,201.54, which was due on Oct 1, 2023 On Nov 1, 2023, the rent due was \$10,991.18 On Dec 1, 2023, the rent due was \$14,780.82*

The landlord further provided a spreadsheet accounting showing a tenant ledger sheet from July 1, 2023, through December 1, 2023. The landlord did not provide a further updated accounting that was filed with their original application.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

After having thoroughly reviewed the evidence, including the testimony of the parties, while I find the tenants have a substantial rent deficiency, I am unable to determine the exact amount of rent due, but not paid by the tenants.

Although the Interim Decision of the adjudicator informed the landlord that the landlord failed to provide the precise terms of the rental accommodation, the landlord did not provide further evidence to define the terms.

The landlord's evidence I find was inconsistent and contradictory to their application. The spreadsheet showed no payments of rent for November 2023, yet their application stated a payment of \$1100 in November.

The landlord's accounting showed monthly rent payable of \$1894.82 for the upper portion, and the same for the lower portion, for a total of \$3789.64 for the entire home. However, the landlord failed to provide sufficient evidence that the monthly rent was increased legally by way of serving the tenants a notice on the RTB approved form as required by the Act.

Further, I find the landlord submitted insufficient evidence to prove that the sums listed on their accounting record and the Direct Request Worksheet-RTB 46 as unpaid rent included non-payment of utilities. I also find that the landlord is not allowed to list

unpaid utility charges on the 10 Day Notice, as the tenancy agreement as written for the lower floor does not require the tenant to pay utility charges to the landlord. This does not mean that the tenants do not owe utility charges to the landlord, only that they may not be listed on the 10 Day Notice and must be a separate claim.

On the other hand, I find there is sufficient evidence, undisputed by the tenants, that currently the tenants are responsible for rent payments of at least \$1800 for the lower floor and \$1800 for the upper floor. This is apart from any rent increase over the term of the tenancy, as I have found insufficient evidence of a legal rent increase as noted above. Although I have not considered the tenant's evidence for purposes of this Decision, WB mentioned in their evidence that unpaid rent was \$19,000.

#### Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

I find that when the tenants were issued the 10 Day Notice on December 27, 2023, they had not paid rent for that month, that they owed rent to the landlord on that date, and did not file an application to dispute the 10 Day Notice within 5 days of service, or at all until well after the effective date. For that reason, I find the tenants are conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice, or January 7, 2024, and the Act requires that they must move out by that date.

Apart from the landlord's inability to complete the hearing to provide more testimony, I find that the evidence is that the tenants have not made any rent payments since at least December 2023, through the date of the hearing. The tenants claim this is due to SB's failing health and RF's inability to work full time for that reason. I find that does not explain WB's and their fellow roommates lack of payment for the lower portion of the home.

As a result, I order the tenancy ended on January 7, 2024, and I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act. Although I find an order of possession of the rental unit effective in **two days** is appropriate in these matters due to the significant amount of unpaid rent which continues to accumulate, I grant the order of possession to be effective on **March 31, 2024 at 1:00 pm**.

The order of possession is applicable for the entire residential property, as the evidence is that the tenants rent the upper portion and sublet the lower portion.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

*Monetary claim-*

Taking into account that I find the tenants owe at least a total of \$3600 per month, \$1800 for the upper unit where they live, and \$1800 for the lower unit which they sublet, I find the landlord has established a monetary claim of \$14,400.

This amount is comprised of \$3600 for the months of December 2023, and January, February, and March 2024, each. I find it reasonable that the landlord be allowed to amend their monetary claim in their application, to account for further unpaid rent for the months of January, February and March 2024, as the tenants have yet to vacate the rental unit or pay rent as of the date of the hearing.

I find the landlord has established a total monetary claim of **\$14,400**, for the unpaid monthly rent and the filing fee, as noted above.

***Information for the parties –***

I find it important to note that I found it procedurally unfair to the landlord to further delay the proceedings and adjourn the hearing. I did not find it fair to the landlord due to the undisputed evidence that the tenants are not paying rent currently to the landlord. Even

the tenant, WB, representing SB at the hearing, said they could pay the rent. However, they have not.

I inform the landlord that I have only considered the base amount of monthly rent for the months of December 2023 through March 2024, or \$1800 each for the upper and lower level for the reasons noted. As there was no consideration on my part of the claim for unpaid rent for any other month, or for unpaid utility charges as they must be made by a separate claim, or any rent increase that was legally increased or other rent deficiency, the landlord is granted leave to reapply for any other amounts that are owed under this tenancy.

### Conclusion

The landlord has been granted an order of possession of the rental unit effective for March 31, 2024 at 1:00 pm.

The landlord's monetary claim has been partially successful in the above terms.

The landlord is granted leave to reapply for any monetary claim not considered in this application in the above terms.

The tenant's application was 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: March 02, 2024

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Residential Tenancy Branch