



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 510 MOODY PARK RENTALS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the Tenant: CNR-MT, PSF, OLC

For the Landlord: OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application pursuant to the Act is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation or tenancy agreement, pursuant to section 62.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:17 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord, represented by agents DC (the Landlord) and NS, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Service of the Landlord's Notice of Dispute Resolution Proceeding and evidence (the Landlord's materials)

The Landlord affirmed he registered mailed the Landlord's materials to the rental unit's address on March 14, 2024. The tracking numbers are recorded on the cover page of this decision.

Based on the Landlord's undisputed testimony and the tracking numbers, I find the Landlord served the tenants the Landlord's materials in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5<sup>th</sup> day after it is mailed. Given the evidence of registered mail, I deem the tenants received the Landlord's materials on March 19, 2024, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Service of the Tenants' Notice of Dispute Resolution Proceeding (the tenants' materials)

The Landlord confirmed receipt of the tenants' materials and that he had enough time to review them.

I find the tenants sufficiently served their materials, per section 71(2)(c) of the Act.

Tenants' application

Per Rule of Procedure 6.6, the tenants have the onus to prove their claims for an order requiring the Landlord to provide services and facilities and to comply with the Act and the Landlord has the onus to prove the reasons of the Notice.

Per Rule of Procedure 7.3, if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants submitted their application, served it and did not attend the hearing, I find it reasonable to dismiss the tenants' application for an order requiring the Landlord to provide services and facilities and to comply with the Act without leave to reapply.

#### Landlords' monetary claim

The Landlord stated he is not seeking a monetary order for unpaid rent.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the Landlord's application to withdraw the claim for a monetary order for unpaid rent.

#### Issues to be Decided

Are the tenants entitled to cancellation of the Notice?

Is the Landlord entitled to:

1. An order of possession under the Notice?
2. An authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Landlord's and tenants' claims and my findings are set out below.

The Landlord testified the tenancy started on December 1, 2022. Monthly rent today is \$2,018.00, due on the first day of the month. The Landlord collected a security deposit (the deposit) in the amount of \$975.00 at the outset of the tenancy and currently holds it. The Landlord submitted the tenancy agreement into evidence.

The Landlord said he left the Notice in the tenants' mail slot on March 4, 2024 at 7:30 PM. The Landlord submitted a witnessed proof of service indicating that he left the Notice in the Tenant's mail slot in the time and date mentioned previously.

The tenants' application states:

Date notice was received: May 4, 2024.

Notice delivery method: Left in mail slot.

Reason to dispute the Notice: I had heart attack cardiac so my church paid the rent for me this month they send cheque to landlord. I never received the notice. I told my landlord always send letter to my email because I am always out of town.

The Landlord submitted the Notice into evidence. It is dated March 4, 2024 and the effective date is March 14, 2024. It states the tenants failed to pay the balance of March 2024 rent in the amount of \$1,718.00.

The tenants submitted their application on March 12, 2024 and the Landlord submitted his application on March 13.

The Landlord affirmed the tenants continue to occupy the rental unit.

The Landlord stated the tenants paid \$1,793.00 on March 21, 2024 and paid April 2024 rent in late March 2024. The Landlord submitted the cheque for the payment of \$1,793.00 dated March 13, 2024.

The Landlord submitted into evidence the use and occupancy receipts for the payments received after he served the Notice.

### Analysis

Based on the Landlord's uncontested and convincing testimony and the proof of service, I find the Landlord left the Notice in the tenant's mailbox on March 4, 2024. I find the Landlord served the Notice in accordance with section 88(f) of the Act. I deem the tenants received the Notice on March 7, per section 90(d) of the Act.

The tenants' submission about service of the Notice is not relevant because the Landlord proved service of the Notice in accordance with section 88(f) of the Act. There is no evidence that the Landlord agreed to only serve documents via email. Furthermore, the tenants admitted that they received the Notice on March 4 and disputed it.

Based on the Landlord's convincing and undisputed testimony, I find the Landlord and the tenants agreed to a tenancy and the tenants are obligated to pay the monthly rent in the amount of \$2,018.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As I deemed the tenants received the Notice on March 7, 2024, I correct the effective date to March 17, 2024, per section 53(2) of the Act.

Pursuant to section 46(4) of the Act, the tenants had to pay the rent within 5 days after receiving the Notice.

I find the tenants disputed the Notice within the timeframe of section 46(4), as I deemed the tenants received the Notice on March 7 and they disputed it on March 12. However, pursuant to the same section, the tenants had to pay the rent by March 12.

The tenants' alleged personal hardship is not a reason to pay rent late.

Based on the Landlord's uncontested testimony, and the cheque dated March 13, 2024, I find the tenants paid March 2024 rent arrears after March 12, 2024.

I find the form and content of the Notice with the corrected effective date complies with section 52 of the Act, as it is signed by the Landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states:

Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,  
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

As the tenants are currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 68(2)(a) of the Act. Thus, I dismiss the tenants' application to cancel the Notice.

Section 55(1) of the Act states that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

As the tenants continue to occupy the rental unit and paid rent after March 12, 2024, I award the Landlord an order of possession, per sections 46(5)(b) and 55(1) of the Act.

Considering that rent has been paid, the tenants did not make submissions about the effective date of the order of possession, and the corrected effective date of the Notice is March 17, 2024, I order the order of possession to be effective seven days after service.

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

### Conclusion

Pursuant to sections 46(5)(b) and 55(1) of the Act, I grant an order of possession to the Landlord effective seven days after service of this order on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord must serve the order of possession on the tenants as soon as possible in accordance with the Act and observe the deeming provisions of section 90.

Section 72(2)(b) states the arbitrator can authorize the Landlord to retain the deposit if a payment from the tenant to the landlord is ordered.

I authorize the Landlord to retain \$100.00 from the deposit to recover the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 22, 2024

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Residential Tenancy Branch