



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNRL-S, MNDCL-S, LRSD, FFL  
CNR-MT, CNC, MNRT, RP, OLC, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on February 23, 2024. The Landlord applied for the following relief pursuant to the *Act*: An order of possession of the rental unit pursuant to sections 46 and 55 of the *Act*; A monetary order for unpaid rent; Permission to retain the security deposit; and An order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on January 19, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*: To cancel a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities; For more time to dispute the 10 Day notice; To cancel a One Month Notice to End Tenancy for cause; A monetary order to recover costs of emergency repairs made by the Tenants during the tenancy; an order cancelling a notice to end tenancy for unpaid rent or utilities; an order that the Landlord make repairs made to the unit; an order that the Landlord complies with the *Act*, regulations, and/or the tenancy agreement; and an order reducing rent for repairs, services or facilities agreed upon but not provided.

The Landlord attended the conference call hearing; however, the Tenants did not. As the Tenants are also applicants to these proceedings, I find that the Tenants had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter – Tenant Attendance

This matter was set for hearing by telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing was the Landlord.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**7.1** The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**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.

Therefore, as the Tenants did not attend the hearing by 9:41 A.M, I dismiss the Tenants' application without leave to reapply.

#### Issues to be Decided

- Is the Landlord entitled to an order of possession of the rental unit pursuant to sections 46 and 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recovery of their filing fee?

#### Background and Evidence

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

The Landlord submitted that the tenancy began on October 15, 2022, that rent in the amount of \$3,150.00 is to be paid by the first day of each month, and that the Tenants paid the Landlord a \$1,575.00 security deposit.

The Landlord testified that they served a 10-day Notice to end tenancy due to unpaid rent, to the Tenants on February 13, 2024, by registered mail. The Notice had an effective date of February 27, 2024, and an outstanding rent amount of \$8,200.00. The Landlord submitted a copy of the 10-day notice into documentary evidence.

The Landlord testified that they served a second 10-day Notice (the "Notice") to end tenancy due to unpaid rent, to the Tenants on March 7, 2024, by personal service. The Notice had an effective date of March 21, 2024, and an outstanding rent amount of \$11,165.00. The Landlord submitted a copy of the second 10-day notice into documentary evidence.

The Landlord also testified that the Tenants have not paid the outstanding rent, as indicated on their Notice. The Landlord testified that as of the date of this hearing the Tenants are past due \$14,315.00 in rent; consisting of \$1,715.00 for December 2024, \$3,150.00 for January 2024, \$3,150.00 for February 2024, \$3,150.00 for March 2024, and \$3,150.00 for April 2024.

The Landlord is requesting that their Notices to end tenancy be enforced, that an order of possession is issued, as well as a monetary order for the unpaid rent.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that he served the Tenant with the Notice to end on April 4, 2019, by personally serving the Notice to the Tenant. I find that the Tenant received the Notice the same day it was served, on April 4, 2019, and that the Tenant did apply to dispute the Notice.

The Tenant's application to dispute the Notice was set for hearing by a telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored, and the only participant who called into the hearing was the Landlord.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure provide as follows:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

### **7.3 Consequences of not attending the hearing**

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.

### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Therefore, as the Tenant did not attend the hearing, I dismiss the Tenant's application without leave to reapply.

Section 55(1) of the *Act* states:

#### ***Order of possession for the landlord***

**55(1)** *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a 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 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I accept the testimony of the Landlord that the Tenants have not paid the outstanding rent as indicated on the Notices, nor have the Tenants paid the full rent for April 2024. I find that the Landlord has established an entitlement to a monetary award in the amount of \$14,315.00 for the outstanding rent for this tenancy, and I authorized the Landlord to retain the Tenant's security deposit as partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find the Landlord is entitled to recover the \$100.00 filing fee for his application.

I grant the Landlord a **Monetary Order** in the amount of **\$12,840.00**; consisting of \$14,315.00 in outstanding rent for the months of December 2023, January 2024, February 2024, March 2024, and April 2024, \$100.00 in the recovery of the Landlord's filing fee, less the \$1,575.00.00 the Landlord is holding in a security deposit for this tenancy.

### Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenants. The Tenants must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$12,840.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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.

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: April 2, 2024

---

Residential Tenancy Branch