



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding SUMMIT CIRCLE DEVELOPMENT  
CORP and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes (L) OPR, MNRL-S, LRSD, FFL  
(T) CNR, OLC

## **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an order of possession based upon a 10 Day Notice for Unpaid Rent;
- a monetary order for unpaid rent;
- an order that the Tenants' security deposit be applied in partial satisfaction of the Tenants' unpaid rent; and,
- authorization for reimbursement of the filing fee.

This hearing was also scheduled to address the Tenants' application for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act; and,
- an order that the Landlord comply with the Act, regulation or tenancy agreement.

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

I find Tenants M.R. and D.R. were each individually served with the Landlord's proceeding package on June 11, 2024, by the Landlord posted the package to the rental unit door in accordance with section 89(1) of the Act. The Landlord provided a Proof of Service form signed by a witness, together with a photograph of each proceeding package posted to the rental unit door, to confirm this service.

The Tenants did not provide any confirmation of service of their proceeding package to the Landlord. The Landlord's owner J.L. testified that he had not been served by the

Tenants and was unaware that they had filed an application for dispute resolution regarding the 10 Day Notice.

## **Preliminary Matters**

### *Tenants' Service of their Dispute Resolution Package*

The Notice of Dispute Resolution Proceeding issued by the RTB to the applicant, under the General Information section, states: "The applicant is required to give the [RTB] proof that this notice and copies of all supporting documents were served to the respondent."

In this case, the Tenants did not attend the hearing and did not submit any evidence regarding proof of serving the Landlord with the dispute resolution package regarding their application to cancel the 10 Day Notice and request for an order that the Landlord comply with the Act, regulation or tenancy agreement.

I find the Tenants have not served the Landlord with the Notice of Dispute Resolution Proceedings, copies of Tenants' evidence and other documents as required by the Act, regulations and rules of procedure, in a manner prescribed by the Act.

Furthermore, the Tenants failed to attend the hearing and present any evidence regarding the claims set out in their application.

For the above reasons, the Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy and request for order that the Landlord comply with the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

### *Landlord's Claim for Unpaid Rent*

At the outset of the hearing the Landlord sought to increase its monetary claim from \$6,900.00 to \$11,500.00 to reflect the Tenants' failure to pay \$2,300.00 pursuant to the tenancy agreement for monthly rent due on June 1, 2024 and July 1, 2024; the additional months of unpaid rent pending this hearing.

*Residential Tenancy Branch Rules of Procedure*, Rule 7.12, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent the Tenants would have known of and resulted since the Landlord submitted the application.

## **Background and Evidence**

Evidence established that this tenancy commenced February 1, 2024 for an annual term to January 31, 2025, and thereafter to continue on a month-to-month basis. The Tenants monthly rent for the unit was \$2,300.00 due on the first day of the month. The Tenants provided the Landlord with a security deposit in the amount of \$1,150.00 on January 17, 2024. The Landlord stated he continues to hold these funds in trust. A copy of the tenancy agreement was provided in evidence.

On May 30, 2024, the Landlord issued a 10 Day Notice for Unpaid Rent then owing in the amount of \$6,900.00 for March, April and May, 2024 rent. The effective date of the Notice was June 9, 2024. A copy of the Notice was submitted in evidence. The Landlord submitted a copy of the Tenants' ledger to confirm the unpaid rent as set forth in the 10 Day Notice.

The Landlord J.L. testified that to date the Tenants have made no payment on the unpaid rent listed in the 10 Day Notice, nor have the Tenants paid rent for June and July, 2024.

The Landlord J.L. further testified the Tenants remain in the rental unit.

## **Issues for Decision**

### **Is the Landlord entitled to a Monetary Order for Unpaid Rent?**

The Landlord has established with sufficient, probative evidence that the Tenants have failed to pay rent for March, April, May, June and July, 2024, in the total amount of \$11,500.00.

I find the 10 Day Notice complies with section 52 of the Act. I further find the 10 Day Notice was served to the Tenants on May 30, 2024, and the Tenants had until June 4, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Although the Tenants filed an application for dispute resolution on June 4, 2024, they failed to serve the Landlord with the dispute resolution package, or present any evidence regarding their position that the 10 Day Notice should be cancelled. Therefore, I find the Tenants have failed to establish that the 10 Day Notice should be cancelled. I find the Landlord has provided sufficient evidence that the Tenants have unpaid rent and the 10 Day Notice was validly issued.

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession. The Landlord testified at the hearing that the police have been called to the unit on multiple occasions. I find that it is appropriate under the circumstances that a 2-day order of possession be granted.

Section 55(1.1) of the Act further provides that where, as here, the Landlord's Notice to end a tenancy is issued pursuant to section 46 (for unpaid rent) and the circumstances of section 55(1) apply, the director must grant an order requiring the payment of unpaid rent. I find that the Tenant had failed to pay rent in the amount of \$11,500.00 due as of July 1, 2024, and the Landlord is entitled to a monetary order for this amount.

The Landlord's application requests that the Tenants' security deposit be applied to the outstanding unpaid rent. Pursuant to section 38(4), I order the Landlord to apply the Tenants' security deposit and accrued interest thereon in partial satisfaction of the Tenants' unpaid rent.

### **Is the Landlord entitled to recover the filing fee for this application from the Tenants?**

As the Landlord was successful in this application, 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.

## **Conclusion**

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy and request for order that the Landlord comply with the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenants. Should the Tenants or any occupant 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 Landlord a Monetary Order in the amount of **\$10,435.49** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 46	\$11,500.00

authorization to recover the filing fee for this application from the landlord under section 72 of the Act	\$100.00
Less Tenants' security deposit	(\$1,150.00)
Less accrued interest on Tenants' security deposit	(\$14.51)
<b>Total Amount</b>	<b>\$10,435.49</b>

The Landlord is provided with this Order on 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.

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

Dated: July 05, 2024

---

Residential Tenancy Branch