



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

Page: 1

## **DECISION**

### **Introduction**

The Tenants seek an order cancelling a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) under the *Residential Tenancy Act* (the “Act”).

By way of cross-application the Landlord seeks an order of possession and a monetary order for unpaid rent, along with a claim to recover the cost of the application fee.

### **Issues**

1. Are the Tenants entitled to an order cancelling the Notice?
2. Is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to a monetary order?

### **Background and Evidence**

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy started on April 1, 2024. Monthly rent, which is due on the first day of the month, is \$709.00. The Tenants paid a \$349.00 security deposit, and there is a written tenancy agreement in place.

The Landlord’s representative testified that the Tenants did not pay rent that was due on July 1, so the Landlord served the Tenants with the Notice. The Notice was served, in its entirety, by being placed in the mailbox of the Tenants. It was served on July 4, 2024. A copy of the Notice was submitted into evidence. Last, the Landlord testified that neither July’s nor August’s rent has been paid.

The Tenant testified that the co-Tenant (who is his wife, but with whom he is currently in divorce proceedings) usually paid the rent. However, when the Tenant found out that July's rent had not been paid, he contacted the ministry of income assistance and disability. He testified that they tried to make rent payments on his behalf but that the Landlord had refused to accept payment. As for August's rent, the Tenant explained that the ministry will not make any payments until certain information is verified.

The Tenant offered to pay all arrears of \$1,418.00 by August 21 (he receives a disability cheque for \$1,500.00). However, the Landlord is not confident that the Tenant will be able to make this payment, along with another \$709.00 that will be due on September 1. The Landlord has given the Tenant "multiple opportunities" to pay rent, nor has the Landlord ever refused to accept payments for rent.

### **Analysis**

Subsection 26(1) of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me to find that the Tenants had a legal right not to pay rent on July 1 and again on August 1. While I appreciate that the Tenant receives disability income, it is the Tenants' responsibility (and not the ministry's) to make payment arrangements.

Certainly, I appreciate the Tenant's recent difficulties in having to deal with divorce proceedings, child custody, and so forth. However, none of these factors affect or otherwise have any impact on the Tenants' obligation to pay rent on time.

Subsection 46(1) of the Act states that

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.

In this dispute, the Tenants did not pay rent due on July 1 and the Landlord subsequently issued the Notice. Having reviewed the Notice, it is my finding that it complies with the form and content requirements as set out in section 52 of the Act.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I must conclude on a balance of probabilities that the Landlord has met the onus of proving a breach of subsection 26(1) of the Act on which the Notice was issued. Thus, the Tenants' application for an order cancelling the Notice is dismissed without leave to reapply and the Landlord is, pursuant to subsection 55(1) of the Act, granted an order of possession.

An order of possession is issued with this decision to the Landlord. The Landlord must immediately serve a copy of the order of possession upon the Tenants, who have seven (7) days to vacate the rental unit. The order of possession may be filed and enforced in the Supreme Court of British Columbia.

Further, pursuant to subsection 55(1.1) of the Act, the Landlord is awarded \$1,418.00 in compensation for rent arrears. The Landlord is also awarded \$100.00 under section 72 of the Act to pay for the cost of the application fee.

Pursuant to subsection 38(4)(b) of the Act the Landlord is ordered and authorized to retain the Tenants' \$349.00 security deposit as partial payment toward the arrears and the cost of the application fee. The Landlord is granted a monetary order for the balance (\$1,169.00); the Landlord must serve a copy of this monetary order upon the Tenants.

### Conclusion

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

The Landlord's application is hereby granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 14, 2024