



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

For the Tenant: CNC

For the Landlord: OPR, MNR, MNDC, FF

### **Introduction**

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties seeking remedy under the Residential Tenancy Act (Act).

The Tenants applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the Landlord

The Landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) served to the Tenants
- a monetary order for unpaid rent
- compensation for a monetary loss or other money owed
- authority to keep the Tenants' security deposit to use against a monetary award
- recovery of the filing fee

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 they served each Tenant their Service of Notice of Dispute Resolution Proceeding, which included the application, notice of hearing, and evidence

(Proceeding Package) by registered mail on August 9, 2024, but neither Tenant collected the mail, and eventually, the mail was returned to sender. A search of the Canada Post website tracking system shows that 3 notice cards were left for the Tenants.

I find the Tenants were served in accordance with the requirements of section 89(1) of the Act, and I find they were served on August 14, 2024, 5 days after mailing as I find the Tenants' failure to collect the registered mail is not sufficient to override deemed served provisions of the Act.

#### Preliminary and Procedural Matters-

At the beginning of the hearing, only the Landlord was present and the hearing began. Seven minutes after the hearing had started, Tenant WH connected to the hearing and immediately there were connection issues. WH kept speaking loudly, repeatedly asking, "Can you hear me?" When answering, WH appeared to never hear me, except on rare occasions.

I was finally able to ascertain that WH was calling from Canadian Tire, and that LL was out "in the car with her kid". I was unable to explain any hearing procedure to WH, due to the constant interruptions from WH, very loudly asking if I could hear him. To continue on with the hearing, it was necessary to place WH on mute in order to complete the Landlord's testimony on their application.

Once WH was returned to the hearing, LL, although they did not identify themselves, was then present and began talking very loudly. Again, the connection issues continued and the Tenants continued to shout, but apparently not being able to hear me. At 16 minutes into the hearing, I had enough evidence from the Landlord to make a determination in this dispute.

I made the decision to end the hearing once I had considered the Landlord's application, for the reasons set out below.

This decision to proceed was based on the fact that a dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. Reasonable steps would be to ensure that a party is in

a quiet, non-public place in order to participate in the hearing, and with reasonable care and planning, they should also be in a place that has sufficient mobile phone coverage.

Issue(s) to be Decided

What should happen with the Tenants' application?

Is the Landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the Landlord entitled to additional monetary compensation and to retain the Tenants' security deposit to partially satisfy a monetary award?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

I have reviewed all evidence, but will refer only to what I find relevant for my decision.

The Tenants did not file a written tenancy agreement. The Landlord filed a written tenancy agreement reflecting that the tenancy began on November 1, 2020, for a monthly rent of \$1200. The Tenants paid a security deposit of \$600 on November 1, 2020.

The Landlord testified that they served the Tenants the 10 Day Notice on July 23, 2024, by handing it to Tenant WH, listing unpaid rent of \$1200 owed as of July 1, 2024. The effective vacancy date listed on the Notice was August 1, 2024. Filed in evidence was a copy of the Notice.

In their own application, the Tenants wrote that they served the Landlords with their own proceeding package on July 23, 2024, with the following statement: *"They came to the property to serve another eviction notice, and when they were here I served the her with the papers required."*

The Landlord stated that the Tenants did not pay the monthly rent owed for June, and since the 10 Day Notice was issued, the Tenants paid \$1200 on August 5, 2024. The Landlord said they applied that payment to the unpaid June rent, and as of the date of the hearing, the Tenants owe rent for the months of July, August, and September 2024, or \$3600 in total. The Landlord said they wrote a receipt for use and occupancy for the

August rent payment, but that receipt was included in their proceeding package that was never collected by the Tenants.

There was no evidence from the Tenants before me that they filed an application in dispute of the 10 Day Notice, despite acknowledging receipt of the 10 Day Notice.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

### **Landlord's application**

#### 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 pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

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 have no evidence before me that the Tenants applied to dispute the 10 Day Notice. Their application related to the Landlord's One Month Notice.

I find the Landlord submitted sufficient, unopposed evidence to prove that the Tenants were served the 10 Day Notice on July 23, 2024, by personal service to WH, that they owed the rent listed, and did not pay the outstanding rent, within five days of service.

I find the tenancy ended on the corrected effective date of the Notice, or August 2, 2024, which is 10 days after service to the Tenants.

As a result, I order the tenancy ended on August 2, 2024, and I grant the Landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two**

**days** after service of the order upon the Tenants, in consideration of the Tenants' failure to pay the monthly rent for July, August, and September 2024.

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 informed that costs of such enforcement, **such as bailiff removal fees and court costs**, are subject to recovery from the Tenants.

Monetary claim-

I find it reasonable that the Landlord be allowed to amend their original monetary claim in their application of \$2400 for the July and August rent to account for further unpaid rent as the undisputed evidence is that the Tenants have yet to vacate the rental unit and have not paid any rent for September 2024.

I find that the Landlord submitted sufficient, unopposed evidence to prove that the Tenants owe a total amount of unpaid rent of **\$3600** due under the tenancy agreement, which is the total unpaid monthly rent through September 2024.

I grant the Landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the Landlord has established a total monetary claim of **\$3700**, for the unpaid monthly rent and the filing fee, as noted above.

I direct the Landlord to retain the Tenants' security deposit and deduct the security deposit of \$1200 plus interest of \$46.58 in partial satisfaction of the monetary award. I grant the Landlord a **monetary order** for the balance due, pursuant to sections 67 and 72 of the Act in the amount of **\$2453.42**.

Should the Tenants fail to pay the Landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The Tenants are **informed** that costs of such enforcement are subject to recovery from the Tenants.

**Tenants' application**

I dismiss the Tenants' application without leave to reapply. The Tenants in effect failed to attend the hearing, as they put themselves in a position that they were unable to participate in the hearing, through no fault of the RTB, while calling from Canadian Tire. Apart from that, I have granted the Landlord's application for an order of possession and therefore, the matter of whether the One Month Notice should be cancelled is now a moot issue. The tenancy is ending by way of the Landlord's successful application.

### Conclusion

The Landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted in the above terms. I ordered the tenancy ended on the corrected effective date of August 2, 2024.

The Tenants' application is 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: September 13, 2024

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Residential Tenancy Branch