



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNRL, FFL, CNR, OLC

### Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act)*.

The male Tenant stated that the Tenants' Application for Dispute Resolution and evidence was not served to the Landlord. As Tenants' Application for Dispute Resolution was not served to the Landlord, it is dismissed, with leave to reapply. As the Tenants' evidence was not served to the Landlord, Tenants' evidence was not accepted as evidence for these proceedings

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 22, 2021 the Landlord's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on January 18, 2021 was sent to the Tenants, via registered mail. The male Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or unpaid utilities?

### Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began approximately 11 years ago;
- there is no written tenancy agreement;
- the current monthly rent of \$1,100.00 is due by the first day of each month;
- on November 02, 2020 the male Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that the rental unit must be vacated by January 31, 2021;
- the Tenants did not pay any rent for December of 2020, January of 2021, February of 2021, and March of 2021;
- on January 03, 2021 the male Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that the unit must be vacated January 14, 2021; and
- the Tenants are still living in the rental unit.

The Agent for the Landlord stated that the Landlord is not seeking compensation for unpaid rent for December of 2020, as the Tenants are entitled to one month's free rent because they were served with a Two Month Notice to End Tenancy for Landlord's Use. The Landlord is seeking compensation for unpaid rent for January of 2021, in the amount of \$1,100.00.

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include compensation for unpaid rent from February and March of 2021, in the amount of \$2,200.00.

The male Tenant stated that rent has not been paid because the Landlord has not provided written rent receipts for rent paid in cash.

### Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a verbal tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,100.00 by the first day of each month.

On the basis of the undisputed evidence, I find that on November 02, 2020 the male Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that the rental unit must be vacated by January 31, 2021.

Pursuant to section 51 of the *Residential Tenancy Act (Act)*, I find that the Tenants were not required to pay rent for December of 2020, as compensation for being served with the Two Month Notice to End Tenancy for Landlord's Use.

Section 26(1) of the *Act* requires a tenant to 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. (Emphasis added)

On the basis of the undisputed evidence that the Tenants did not pay rent for January of 2021 and in the absence of evidence of a legal right to withhold that rent, I find that the Tenants must pay \$1,100.00 in outstanding rent for January of 2021.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that on January 03, 2021 the male Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

As rent for January of 2021 has not been paid and the Tenants were served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. As the rental unit has not been vacated on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I grant the Landlord's application for an Order of Possession.

I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Landlord's Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due. As the Tenants have remained in the rental unit until March 29, 2021, I find that they must pay rent to the Landlord, in the amount of \$2,200.00, for February and March of 2021.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Tenants' Application for Dispute Resolution was dismissed, with leave to reapply, as it was not properly served to the Landlord.

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$3,400.00, which includes \$3,300.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$3,400.00. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 29, 2021

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Residential Tenancy Branch