



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant: CNR, RP, RR, LRE, PSF  
Landlord: OPR, FFL

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62; and
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and tenant D.J.B. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The landlord testified that she personally served each tenant with this application for dispute resolution but could not recall on what date. Tenant D.J.B. testified that the landlord personally served him with the landlord's application for dispute resolution, though he could not recall on what date. Tenant D.J.B. testified that he witnessed the landlord personally serve tenant T.O. with this application for dispute resolution at the same time he was personally served.

I find that both tenants were served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

The landlord did not dispute service of the tenants' application for dispute resolution. I find that the landlord was sufficiently served for the purposes of this *Act*, with the tenants' application for dispute resolution in accordance with section 71 of the *Act*.

#### Preliminary Issue- Amendment

The tenants' application listed an abbreviation of the subject rental city rather than the full name of the city. In the hearing, pursuant to section 64 of the *Act*, I amended the tenants' application for dispute resolution to state the full name of the subject rental city. Neither party objected to the above amendment.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the 10 Day Notice.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the 10 Day Notice.

### Issue to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
2. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a monetary order for unpaid rent, pursuant to section 55(1.1) of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2020 and is currently ongoing. Monthly rent in the amount of \$2,400.00 is payable on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants signed a tenancy agreement for the entire basement of the subject rental property which has three separate suites, all with kitchenettes. Only one of the three suites has an oven. Both parties agree that the tenants each reside in a separate suite and each pay the landlord \$1,200.00 per month.

Both parties agree that tenant T.O. did not pay her portion of rent to the landlord from March to June 2021. Both parties agree that tenant D.J.B. paid the landlord his portion of rent (\$1,200.00) from March to June 2021 and an additional \$250.00 in March 2021. The landlord testified that the amount of rent outstanding is \$4,550.00.

Both parties agree that there is one main door to the basement and that once you enter the main door, the other suites have private entrances. The landlord testified that she posted a 10 Day Notice for Unpaid Rent (the "10 Day Notice") on the main door to the basement but did not recall on what date. The 10 Day Notice is dated March 8, 2021 and is signed by the landlord. Tenant D.J.B. testified that he received the 10 Day

Notice, that was posted on the main basement door, on March 10, 2021 and filed to dispute it on March 12, 2021. Tenant D.J.B. testified that he immediately showed the 10 Day Notice to tenant T.O. because she is the one responsible for the issuance of the 10 Day Notice. The 10 Day Notice was entered into evidence and states that:

- the tenants failed to pay \$1,100.00 that was due on March 1, 2021, and
- the tenants must move out of the subject rental property by March 18, 2021.

The 10 Day Notice was signed by the landlord

### Analysis

I find that service of the 10 Day Notice was effected on the tenants on March 10, 2021, in accordance with section 88 of the *Act* because that is the date tenant D.J.B. testified he received it.

Residential Tenancy Policy Guideline #13 states:

Co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

Based on the testimony of both parties and the tenancy agreement entered into evidence which lists both D.J.B. and T.O. as tenants, and was signed by both tenants and the landlord, I find that D.J.B. and T.O. are co-tenants. As co-tenants, D.J.B. and T.O. are jointly and severally responsible for the payment of the full amount of rent. I

accept that tenant T.O. did not pay her portion of the rent, nonetheless, tenant D.J.B. was equally responsible to ensure that it was paid on time. The failure of the tenants to ensure rent was paid on time lead to the landlord serving the tenants with the 10 Day Notice.

Section 26(1) of the *Act* states that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,400.00 on the first day of each month. Based on the testimony of both parties I find that the tenants did not pay rent in accordance with section 26(1) of the *Act*.

Section 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the testimony of both parties I find that the tenants did not pay all of March 2021's rent on March 1, 2021. Based on the testimony of both parties I find that the tenants did not pay the overdue rent within five days of receiving the 10 Day Notice. The tenants' application to cancel the 10 Day Notice is therefore dismissed without leave to reapply and the 10 Day Notice is upheld. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act*. Pursuant to my above findings, I award the landlord a two-day Order of Possession for nonpayment of rent, in accordance with sections 46 and 55 of the *Act*.

Section 55 (1) and section 55(1.1) of the *Act* state:

- 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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the landlord is entitled to a monetary award for non-payment of rent in the amount of \$4,550.00 pursuant to section 55(1.1) of the *Act* because the tenants' application to cancel the 10 Day Notice was in relation to non payment of rent under section 46 of the *Act*, the landlord's notice to end tenancy complies with section 52 of the *Act* and the tenant's application to cancel the notice was dismissed and the 10 Day Notice was upheld.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenants. I find that the landlord is entitled to retain the tenants' security and pet damage deposits in the amount of \$2,400.00 in part satisfaction of the landlord's monetary claim for unpaid rent against the tenants.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$4,550.00
Filing Fee	\$100.00
Less security deposit	-\$1,200.00
Less pet damage deposit	-\$1,200.00
<b>TOTAL</b>	<b>\$2,250.00</b>

The landlord is provided with this Order in 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. 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.

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: June 18, 2021

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Residential Tenancy Branch