



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, FFL, CNR

### Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied for an Order cancelling a notice to end tenancy pursuant to section 46.

The Landlord applied for:

1. An Order for Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants failed to attend to present their claim while the Landlord appeared and was ready to proceed on both applications. As the Tenants did not attend to pursue their application, I dismiss their application without leave to reapply.

I accept the Landlord’s evidence that the Tenants were each served with the Landlord’s application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on March 22, 2022 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to

have received the Hearing Package on March 27, 2022. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. The Landlord confirms receipt of the Tenants' application for dispute resolution.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on or about November 2020. Rent of \$500.00 is payable on the first day of each month. No security deposit was collected. The Tenants paid some rents to and including June 2021. The Tenants paid no rents for the period July 2021 to January 2022 inclusive. On January 15, 2022 the Landlord served the Tenants with a 10-day notice to end tenancy for unpaid rent dated January 14, 2022 (the "Notice") by posting the Notice on the door. The Notice sets out unpaid rent of \$3,500.00 due January 1, 2022. This amount is based on the unpaid rents for July 1, 2021 to January 2022 inclusive. The Tenants have not paid any rent since receipt of the Notice and have not moved out of the unit.

The Notice does not set out an effective date. The Landlord states that the 2<sup>nd</sup> page of the Notice sets out the calculations for the effective date of the Notice, that the Tenants made no submissions in their application in relation to the Notice being ineffective and that the Tenants did not attend the hearing to pursue the dispute of the Notice. The Landlord argues that in the circumstances it is reasonable to amend the Notice to set out the effective date that should have been set out on the Notice. The Landlord refers to the Tenants' application setting out that they received the Notice on January 15, 2022.

The Landlord claims an order of possession and unpaid rents.

Analysis

Section 52(c) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must state the effective date of the notice. Section 68 (1) of the Act provides that if a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Given the undisputed evidence and argument that the Tenants would have known the effective date of the Notice due to the calculation information for the effective date being set out on the 2<sup>nd</sup> page of the Notice and as the Tenants did not attend the hearing to pursue any cancellation of the Notice based on either its validity or effectiveness, I consider that in the circumstances it would be reasonable to amend the Notice to include an effective date of the Notice. Based on the particulars of the Tenants' application that they received the Notice on January 15, 2022 I calculate the effective date of the Notice to be January 25, 2022. I note that all other parts of the Notice comply in form and content.

Section 55(1) of the Act provides that 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.

As the Tenants' application has been dismissed and as the Notice has been amended to be effective in form and content, I find that the Landlord is entitled to an order of possession effective 2 days after the Tenants receive the order of possession.

Section 26(1) of the Act provides 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. Based on the undisputed evidence of unpaid rents I find that the Landlord is entitled to **\$4,500.00** for the period July 2021 to and including March 2022. As the Landlord's claims have been successful, I find that the Landlord is entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$4,600.00**.

Conclusion

I **grant** an Order of Possession to the Landlord **effective two days after service** of the Order on the Tenants. The Tenants must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for **\$4,600.00**. If necessary, this order may be filed in the 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: April 04, 2022

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Residential Tenancy Branch