



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: CNR, FFT  
                             LL: MNRL-S, OPU, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants made an Application for Dispute Resolution on February 11, 2022 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 9, 2022.
- an order granting the return of the filing fee.

The Tenants’ amended their Application on March 7, 2022 to include a claim to cancel another 10 Day Notice dated March 4, 2022 (the “10 Day Notice”).

The Landlord’s Application for Dispute Resolution was made on April 20, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid utilities;
- an order to retain the Tenants’ security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on May 19, 2022 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes

had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

### Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on May 19, 2022.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenants, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent and utilities, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order to retain the Tenants' deposits pursuant to Section 38, 67, 72 of the *Act*?
4. Is the Landlord entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlord testified that the tenancy began on December 1, 2020. The Landlord stated that the Tenants are required to pay rent in the amount of \$2,842.00 after a rent increase took effect on April 1, 2022. The Landlord stated that the rent is due to be paid on the first day of each month. The Landlord stated that the Tenants paid a security deposit in the amount of \$1,400.00 and a pet damage deposit in the amount of \$1,400.00, both of which the Landlord continues to hold.

The Landlord testified the Tenants did not pay rent when due for March 2022. The Landlord stated that he subsequently served the Tenants with a 10 Day Notice dated March 4, 2022 with an effective date of March 17, 2022 by email which was sent to the Tenants on March 4, 2022. The Landlord provided a copy of the email in support. I note that the Tenants had amended their Application on March 7, 2022 to cancel the 10 Day Notice dated March 4, 2022.

The Landlord testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$2,800.00 which was the amount of rent due to the Landlord on March 1, 2022. The Landlord stated that after serving the 10 Day Notice, the Tenants have not paid any amount of rent towards the outstanding balance owed.

The Landlord stated that a rent increase had been served to the Tenants which took effect on April 1, 2022, which increased the amount of rent owed to the Landlord to \$2,842.00. The Landlord stated that the Tenants have also failed to pay rent in the amount of \$2,842.00 for the months of April and May 2022.

The Landlord stated that the Tenants currently owe rent in the amount of \$8,484.00 for March, April and May 2022. As such, the Landlord is seeking an order of possession.

The Landlord has also applied for a monetary order relating to unpaid utilities. The Landlord provided a copy of the water bill which shows an outstanding balance of \$1,919.75. The Landlord stated that the Tenants are responsible for paying utilities and provided a copy of the tenancy agreement in support. The Landlord provided a written demand letter which was sent to the Tenants on January 31, 2022. The Landlord stated that the Tenants have refused to pay the water bill and currently have an outstanding balance owing for utilities in the amount of \$1,919.75.

As such, the Landlord is seeking a monetary order in the amount of \$10,403.75 for unpaid rent and utilities. If successful, the Landlord is seeking to retain the Tenants' deposits as well as the return of the filing fee. I note that no one attended the hearing for the Tenants to respond to the Landlord's claims.

### Analysis

Based on the uncontested evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states 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) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord testified that he served the Tenants with the 10 Day Notice dated March 4, 2022 with an effective vacancy date of March 17, 2022 by email which was sent on March 4, 2022. As the Tenants amended their Application on March 7, 2022 to cancel the 10 Day Notice dated March 4, 2022, I accept that they received the 10 Day Notice and find the 10 Day Notice was sufficiently served pursuant to Section 71 of the Act.

While the Tenants had applied to cancel the 10 Day Notice, I find that no one attended the hearing for the Tenants, therefore, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. Furthermore, I find that the Tenants were required, but failed to pay rent to the Landlord in the amount of \$8,484.00.

I further find that the Tenants were required, but failed to pay utilities to the Landlord in the amount of \$1,919.75 in relation to the water bill provided by the Landlord.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent and utilities in the amount of **\$10,403.75**. I find it appropriate in the circumstances to order that the Landlord retain the \$2,800.00 security and pet damage deposits held in partial satisfaction of the claim. I further find that the Landlord is entitled to the return of the **\$100.00** filing fee.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$7,703.75, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$8,484.00
Unpaid Utilities:	\$1,919.75
Filing Fee	\$100.00
<i>LESS</i> security deposit:	-( <i>\$2,800.00</i> )
<b>TOTAL:</b>	<b>\$7,703.75</b>

### Conclusion

The Tenants have breached the *Act* by not paying rent and utilities when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$7,703.75. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 19, 2022

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Residential Tenancy Branch