



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant: CNR-MT, OLC

Landlord: OPR, MNRL-S, MNDCL, FFL

### Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

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;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant B.J. and the landlords 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.

Preliminary Issue- Service

Tenant B.J. testified that the landlords were served with the tenants' application for dispute resolution via regular mail on December 15, 2022. The landlord's confirmed receipt of same. While service via regular mail is not a permitted method of service under section 89 of the *Act*, I find that the landlords were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* because receipt was acknowledged.

Tenant B.J. testified that no evidence was served on the landlords.

The landlords testified that the tenants were served with their application for dispute resolution and evidence via registered mail on March 14, 2023. The landlords testified that the tenants did not pick up the registered mail package and it was returned to sender. The landlords entered into evidence a registered mail receipt dated March 14 2023. Tenant B.J. testified that the tenants received a Canada post pickup slip around that time but did not pick up the package. I find that the tenants were deemed served with the landlords' application for dispute resolution and evidence on March 19, 2023, five days after its mailing, pursuant to sections 88, 89 and 90 of the act. Failure to pick up ones registered mail does not relieve you of the deeming provisions in section 90 of the Act.

The landlords testified that their evidence in response to the tenants' application for dispute resolution was posted on the tenants' door on March 4, 2023. Tenant B.J. testified that he received the landlords' evidence around that time. I find that the tenants were served with the landlords' evidence in accordance with section 88 of the act.

The landlords testified that the tenants were served with their amendment via registered mail on March 28, 2023. A registered mail receipt for same was entered into evidence. Tenant B.J. testified that he did not recall if he received the amendment or a pick up slip from Canada post. Based on the landlords testimony and the Canada post registered mail receipt entered into evidence, I find on a balance of probabilities, that the landlords served the tenants with their amendment via registered mail on March 28, 2023. I find that the tenants were deemed served with the landlords' amendment on April 2, 2023, five days after its registered mailing, in accordance with sections 88 and 90 of the *Act*.

### Issues to be Decided

1. Are the tenants entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
3. Are the tenants entitled to an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62 of the *Act*?
4. Are the landlords entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
5. Are the landlords entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
6. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
7. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
8. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Evidence/ Analysis

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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on July 1, 2018,
- monthly rent in the amount of \$2,300.00 is payable on the first day of each month,
- a security deposit of \$1,000.00 was paid by the tenants to the landlords.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that they posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenants' door on December 4, 2022. Tenant B.J. testified that

he received the Notice in the first week of December 2022, probably on December 4, 2022. The landlords entered into evidence a witnessed proof of service form which states that the Notice was posted on the tenants' door on December 4, 2022. I find that the tenants were deemed served with the Notice on December 7, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

The Notice was entered into evidence, is signed by the landlord, is dated December 4, 2022, gives the address of the rental unit, states that the effective date of the notice is December 17, 2022 is in the approved form, #RTB-30, and states the following ground for ending the tenancy:

You have failed to pay rent in the amount of \$4,121.84 due on December 1, 2022

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

The landlords testified that they served the Notice on the tenants because the tenants did not pay November 2022's rent in full and did not pay December 2022 's rent on December 1st 2022 when it was due. The Landlords testified that at the time the notice was served the tenants owed \$1821.84 for November 2022's rent and \$2,300 for it December 2022's rent, for a total of \$4,121.84 owing in unpaid rent.

Tenant B.J. testified that when the Notice was served the tenants owed \$4,121.84 in unpaid rent.

Both parties agree that after the Notice was served on the tenants the next payment received by the landlord for rent was \$2,000.00 on December 16, 2022. Both parties agree that the next payment received by the landlord was on February 2, 2023 in the amount of \$419.71 and that this payment was for utilities. It is undisputed that the tenants have not paid any rent for January, February, March or April of 2023. The landlords entered into evidence the interac rent payments set out above. Both parties agree that including the month of April 2023 the tenants owe the landlord \$11,321.84 in unpaid rent. As no rent has been paid for April 2023, the total amount outstanding as of the end of March 2023 equals \$9,021.84 (\$11,321.84- \$2,300.00).

Tenant B.J. testified that they fell behind on rent because tenant J.A. got sick and was in the hospital and unable to work. Tenant B.J. testified that he missed a lot of work as he was visiting tenant J.A. in the hospital. Tenant B.J. testified that regarding rent from

January to April 2023, “things have been tight”. Tenant B.J. testified that things have been tough since October 2022.

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.

In this case the tenants filed to dispute the Notice on December 9, 2022, two days after they were deemed served with it. I find that the tenants filed to dispute the Notice within the permitted time and therefore did not need to file for more time to dispute the Notice.

Based on the testimony of both parties and the interac records entered into evidence, I find that at the time the Notice was served, the tenants owed \$4,121.84 in unpaid rent and did not pay that outstanding rent within five days of receiving the Notice. Pursuant to section 46 of the *Act*, the Notice is upheld for failure to pay rent. The tenants’ application to dispute the Notice is dismissed without leave to reapply.

Section 55(1) of the *Act* states 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.

I find that since the Notice complies with section 52 of the *Act* and the tenant’s application to cancel the Notice was dismissed and the Notice was upheld, the landlords are entitled to a two-day Order of Possession.

Based on the testimony of both parties and the tenancy agreement entered into evidence I find that rent in the amount of \$2,300.00 was due on the first day of each month.

Based on the agreed testimony of the parties and the interac records entered into evidence I find that the tenants owe \$9,021.84 in unpaid rent accrued between November 2022 and March 2023. I find that the landlord is entitled to rent from April 1-18, 2023 on a per diem basis pursuant to the following calculations:

$$\begin{aligned} &\$2,300.00 \text{ (rent)} / 30 \text{ (days in April)} = \$76.67 \text{ (per diem rate)} \\ &\$76.67 \text{ (per diem rate)} \times 18 \text{ (days tenancy ongoing in April 2023)} = \mathbf{\$1,380.06} \end{aligned}$$

Residential Tenancy Policy Guideline #3 states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

The landlords may apply to the Residential Tenancy Branch for damages for overholding for days after April 18, 2023 that the tenants occupy the subject rental property.

The tenancy agreement states that utilities are not included in the rent. Both parties agree that the tenants owe the landlord \$327.89 in unpaid utilities. Pursuant to the tenancy agreement and section 67 of the *Act*, I find that the landlords are entitled to a Monetary Order of \$327.89 for unpaid utilities.

The landlord testified that in addition to seeking to recover monies for unpaid rent and utilities the landlord is also seeking to recover registered mail costs totaling \$68.52.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*, Regulation or tenancy agreement. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the landlords' claims to recover the registered mail costs.

As the landlords were successful in the majority of their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlords are entitled to retain the tenants' entire security deposit in the amount of \$1,000.00.

In relation to the tenant's application for an Order for the landlords to comply with the *Act*, Regulation or tenancy agreement, Tenant B.J. testified that the landlord has been sending "friendly reminders" of outstanding rent every two weeks. Tenant B.J. testified that this harassment is annoying. I find that the landlord has not breached the *Act*, tenancy agreement or Regulation by requesting payment of unpaid rent every two weeks. I find that such reminders on the part of the landlords were restrained and reasonable given the amount of unpaid rent owed by the tenants. The tenants' application for an Order for the landlords to comply with the *Act*, Regulation or tenancy agreement is therefore dismissed without leave to reapply.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords 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.

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

Item	Amount
Unpaid Rent November 2022 to March 2023	\$9,021.84
Unpaid Rent April 1-18, 2023	\$1,380.06
Unpaid Utilities	\$327.89
Filing Fee	\$100.00
Less security deposit	-\$1,000.00
<b>TOTAL</b>	<b>\$9,829.79</b>

The landlords are 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.

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: April 18, 2023

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Residential Tenancy Branch