



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes

**LL: OPL-4M OPR-DR MNR-DR MNRL FFL**  
**TT: CNR-MT CNL-4M-MT MNDCT OLC FFT**

### Introduction

This hearing dealt with four applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). In the first application (“Landlord’s First Application”), the Landlord seeks:

- an Order of Possession pursuant to a Four Month Notice to End Tenancy for Demolition dated July 19, 2022 (“4 Month Notice”) pursuant to sections 49 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for the Landlord’s First Application from the Tenants pursuant to section 72.

In the second application (“Landlord’s Second Application”), the Landlord seeks;

- an Order of Possession pursuant to 10 Day Notice for Unpaid Rent and/or Utilities dated January 3, 2023 (“First 10 Day Notice”) pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for the Landlord’s Second Application from the Tenants pursuant to section 72.

In the third application (“Landlord’s Third Application”), the Landlord seeks:

- an Order of Possession pursuant to 10 Day Notice for Unpaid Rent and/or Utilities dated February 3, 2023 (“Second 10 Day Notice”) pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for the Landlord’s Third Application from the Tenants pursuant to section 72.

The Tenants made one application (“Tenants’ Application”). In the Tenants’ Application, the Tenants seek:

- an order for more time to make an application to cancel the Landlord’s 4 Month Notice and First 10 Day Notice pursuant to section 66;
- if an order is granted for more time to make the Tenants’ Application is granted to dispute the 4 Month Notice and the First 10 Day Notice, then to seek an order for cancellation of the 4 Month Notice and the First 10 Day Notice pursuant to sections 46 and 49;
- a monetary order for compensation from the Landlord pursuant to section 67;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Tenants’ Application from the Landlord pursuant to section 72.

Two agents (“SS” and “TD”) for the Landlord and one of the two Tenants (“MK”) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

SS stated he served the Notice of Dispute Resolution and evidence (collectively the “Landlord’s First NDRP”) on the Tenants in-person for the Landlord’s First Application. MK stated the Tenants did not receive the Landlord’s First NDRP. The Landlord submitted into evidence a copy of a Proof of Service on Form RTB-34. Although the Proof of Service was signed, it was not witnessed. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that the Landlord’s First NDRP was served on the Tenants in accordance with the provisions of section 89 of the Act. As such, I dismiss the Landlord’s First Application.

SS stated he served the Notice of Dispute Resolution and evidence (collectively the “Landlord’s Second NDRP”) on the Tenants in-person. MK stated the Tenants did not receive the Landlord’s Second NDRP. SS submitted into evidence a copy of a Proof of Service on Form RTB-34 dated January 3, 2023. The Proof of Service was signed and witnessed. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Landlord’s Second NDRP was served on the Tenants in accordance with the provisions of section 89 of the Act. As such, I find the Landlord’s

Second NDRP was served by the Landlord on the Tenants in accordance with the provisions of section 89 of the Act.

SS stated he served the Notice of Dispute Resolution and evidence (collectively the “Landlord’s Third NDRP”) for the Landlord’s Third Application on the Tenants in-person. MK stated the Tenants stated he did not receive the Landlord’s Third NDRP. SS submitted into evidence a copy of a Proof of Service on Form RTB-34 dated February 3, 2023. The Proof of Service was signed and witnessed. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Landlord’s Second NDRP was served on the Tenants in accordance with the provisions of section 89 of the Act. As such, I find the Landlord’s Third NDRP was served on the Tenants in accordance with the provisions of section 89 of the Act.

MK stated he served the Tenants’ Notice of Dispute Resolution Proceeding (“Tenants’ NDRP”) on the Landlord by registered mail but he could not recall the date of posting or the tracking number for the package. TD acknowledged the Landlord received the Tenants’ NDRP by registered mail on January 23, 2023. As such, I find the Tenants’ NDRP was served on the Landlord in accordance with section 89 of the Act.

MK stated the Tenants did not serve any evidence on the Landlord for this proceeding.

#### Preliminary Matter – Severance and Dismissal of Tenants’ Claims

The Tenants’ Application included claims for (i) a monetary order for compensation from the Landlord; and (iii) an order for the Landlord to comply with the Act, Regulations and/or the tenancy agreement (collectively the “Tenants’ Other Claims”).

Rule 2.3 of the RoP states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch (“RTB”) are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. I find the Tenants’ claim for an extension of time to make the Application and, if granted, an

order for cancellation of the First 10 Day Notice and recovery of the filing fee for the Tenants' Application from the Landlord to be the primary issues before me. As such, I will sever the Tenants' Other Claims from the Tenants' Application. After determining whether the First 10 Day Notice should be cancelled, I will dismiss the Tenants' Other Claims, with or without leave to reapply to reapply, as appropriate.

### Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession based on the 4 Month Notice?
- an Order of Possession based on the First 10 Day Notice?
- an Order of Possession based on the Second 10 Day Notice?
- a monetary order for unpaid rent?
- recover the filing fee for the Landlord's Second and Third Applications from the Tenant?

Are the Tenants entitled to:

- an order for an extension of time to make the Tenants' Application;
- if an order for an extension of time to make the Tenants' Application is granted, are the Tenants entitled to an order for cancellation of the First 10 Day Notice?
- recover the filing fee for the Tenants' Application from the Landlord?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's Second and Third Applications and the Tenants' Application and my findings are set out below.

SS submitted into evidence a copy of a tenancy agreement between the Landlord and Tenant. The parties agreed the tenancy commenced on October 1, 2018, on a month-to-month basis, with rent of \$750.00 payable on the 1<sup>st</sup> day of each month. The Tenants were not required to pay a security or pet damage deposit.

MK stated the other Tenant ("DP") was deceased, but he did not submit any evidence that DP was deceased, such as a death certificate. In the absence of such evidence, I

decline to remove DP as an applicant in the Tenants' Application and as a respondent in the Landlord's First, Second and Third Applications.

SS submitted into evidence a copy of the First 10 Day Notice. SS stated the Landlord served the First 10 Day Notice on the MK personally on January 3, 2023. The Tenant acknowledge he received the First 10 Day Notice personally. As such, I find the First 10 Day Notice was served on the Tenants by the Landlord in accordance with the provisions of section 88 of the Act.

SS stated the Tenants have not paid the rent for November 2022 to April 2023 inclusive. SS stated the Tenant owes the Landlord a total of \$4,500.00 for rental arrears calculated as follows:

<b>Date</b>	<b>Rent Owed</b>	<b>Paid</b>	<b>Balance</b>
01-Nov-22	\$750.00	\$0.00	\$750.00
01-Dec-22	\$750.00	\$0.00	\$1,500.00
01-Jan-23	\$750.00	\$0.00	\$2,250.00
01-Feb-23	\$750.00	\$0.00	\$3,000.00
01-Mar-23	\$750.00	\$0.00	\$3,750.00
01-Apr-23	\$750.00	\$0.00	\$4,500.00
<b>Total</b>	<b>\$4,500.00</b>	<b>\$0.00</b>	<b>\$4,500.00.00</b>

MK admitted the Tenants did not pay the rent for November 2022 and there were rental arrears for six months of rent as of the date of this hearing. MK stated he attempted to pay the rent the Landlord the rent was refused. MK did not provide any details on the dates on which he attempted to pay the rent. SS denied the Landlord refused to take the rent from the Tenant. The Tenant did not submit any evidence to prove he attempted to pay the rent or call any witnesses to testify they witnessed MK try to pay the rent to the Landlord. Later in the hearing, MK stated the Tenants did not pay the rent because the water supply was turned off. SS stated that, if I grant an Order of Possession to the Landlord, then the Landlord would be satisfied with an order that required the Tenants to vacate the rental unit by May 15, 2023.

## Analysis

### **1. Landlord's Claim for Order of Possession**

Subsections 26(1) and 46(1) through 46(5) of the Act state:

- 26(1) *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.
- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) 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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

The First 10 Day Notice was served on the Tenants on January 3, 2023. Pursuant to section 46(4), the Tenants had until January 9, 2023, being the next business day after the expiry of the 5-day dispute period, within which to make an application for dispute resolution to dispute the First 10 Day Notice. The records of the RTB indicate the Tenants made the Tenants' Application on January 6, 2023. As such, the Tenants made

the Tenants' Application within the 5-day dispute period. As the Tenants made the Tenants' Application within the 5-day dispute period, it was unnecessary for the Tenants to seek an extension of time to dispute the First 10 Day Notice. I also find that when the Tenants made the Tenants' Application to dispute the First 10 Day Notice, they are deemed to have disputed any subsequent Notice to End Tenancy for Unpaid Rent and/or Utilities. As such, I find the Tenants are deemed to have disputed the Second 10 Day Notice.

SS stated the Tenants did not pay the rent for November 2022 or for any month thereafter. SS stated the Tenants now have rental arrears of \$4,500.00 owing for the months of November 2022 through April 2023 inclusive. MK admitted the Tenants have rental arrears for six months of rent. MK stated he attempted to pay the rent to the Landlord, but the rent was refused. SS denied the Landlord refused to take the rent from the Tenant. The Tenant did not submit any evidence to prove the Tenants attempted to pay the rent or call any witnesses to testify they witnessed MK try to pay the rent.

Pursuant to section 26(1) states 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. Later in the hearing, MK stated the Tenants did not pay the rent because the water supply was turned off. The Tenant did not provide any evidence that he telephoned the Landlord on at least two occasions, had the repairs to the water supply performed and incurred the expense of doing performing the emergency repairs. As such, there is no evidence the Tenants were entitled to deduct the cost of emergency repairs to the water supply from the rent. Based on the foregoing, I find the Tenants have not proven, on a balance of probabilities, that they were entitled to withhold all or any portion of the rent owing to the Landlord. I also find the Tenants have not proven, on a balance of probabilities that the Landlord refused to accept the rent from the Tenants. As such, I dismiss the Tenants' Application without leave to reapply.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities that the Tenants had rental arrears of \$750.00 as of November 1, 2022. As such, I find the Landlord has proven, on a balance of probabilities, that the First 10 Day Notice was issued for a valid reason. Section 55(1) states:

- 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.

The provisions of section 55(1) of the Act are mandatory and I must grant an Order of Possession to the Landlord when the criteria of that section have been satisfied. As noted above, I have dismissed the Tenants' Application. I have reviewed the First 10 Day Notice and find it complies with the form and content requirements of section 52 of the Act. Pursuant to section 55(1) of the Act, I order the Tenants provide the Landlord with vacant possession of the rental unit by 1:00 pm on May 15, 2023, after being served with the Order of Possession.

As I have granted the Landlord an Order of Possession pursuant to the First 10 Day Notice, it is not necessary for me to consider whether the Tenants are entitled to an extension of time to make an application for dispute resolution to dispute the 4 Month Notice and, if granted, whether the Tenants are entitled to cancellation of the 4 Month Notice.

## **2. Monetary Order for Unpaid Rent:**

I find the Tenants knew, or ought to have know, that if they continued to occupy the rental unit after the effective date of the First 10 Day Notice, that they would be required to pay the Landlord for rent that accrued during their occupancy of the rental unit. As such, I find the Tenants owe a total of \$4,500.00 to the Landlord for rental arrears from November 2022 to April 2023. Section 55(1.1) of the Act states:

- 55(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.

The provisions of section 55(1.1) of the Act are mandatory and I must grant an order to the Landlord requiring payment of the unpaid rent by the Tenants when the criteria of that section are satisfied. Pursuant to section 55(4)(b), I order the Tenants pay the Landlord \$4,500.00, being \$750.00 per month for six months, in satisfaction of the rental arrears owed for the months of November 2022 through April 2023 inclusive.

### **3. Reimbursement of Landlord's Filing Fee**

The Landlord was successful in the Landlord's Second Application. It was unnecessary for the Landlord to make the Landlord's Third Application as the claims could have been made by way of filing an amendment to the Landlord's Second Application without paying a filing fee to the RTB. As such I find the Landlord is only entitled to recover the \$100.00 filing fee for the Landlord's Second Application from the Tenant. As such, I order that the Landlord may recover the filing fee of the Landlord's Second Application pursuant to section 72(1) of the Act.

### **4. Dismissal of Tenants' Severed Claims**

As noted above, I severed the Tenants' Other Claims from the Tenants' Application. I have issued an Order of Possession to the Landlord. As such, the Tenants are no longer entitled to make a claim for the Landlord to comply with the Act, Regulations and/or tenancy agreement and I dismiss this claim without leave to reapply. However, I dismiss, leave to reapply, the Tenants' claim for compensation from the Landlord. As such, the Tenants have the option of making a new application for dispute resolution to make a claim for compensation from the Landlord.

### **Conclusion:**

I order the Tenants deliver vacant possession of the rental unit to the Landlord by 1:00 pm on May 15, 2023, after being served with a copy of this decision and the attached Order of Possession by the Landlord. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Tenant pay the Landlord \$4,600.00, representing the following:

Description	Amount
Rental Arrears for the months of November 2022 through to April 2023 inclusive (\$750.00 x 6 months)	\$4,500.00
Filing Fee for Landlord's Second Application	\$100.00
<b>Total</b>	<b>\$4,600.00</b>

This Monetary Order must be served by the Landlord on the Tenant as soon as possible and may be enforced in the BC Provincial Court.

I dismiss, without leave to reapply, the Tenants' claim for the Landlord to comply with the Act, Regulations and/or tenancy agreement. I dismiss, with leave to reapply, the Tenants' claim for compensation from the Landlord.

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 30, 2023

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Residential Tenancy Branch