



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR / OPR-DR, MNR-DR, FFL

### Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties, which were crossed to be heard simultaneously.

The Tenants seek the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act);

The Landlord seeks the following:

- an Order of Possession after issuing the Notice under section 55(2)(b) of the Act;
- a Monetary Order for unpaid rent under sections 26 and 67 of the Act; and
- to recover the filing fee from the Tenants under section 72 of the Act

Agents for the Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord's Agents affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 1:40 PM to enable the Tenants to connect with this teleconference hearing scheduled for 1:30 PM, the Tenants did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from

the online teleconference system that the Landlord's Agents and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator.

Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, in the absence of any attendance at this hearing by the Tenants or their Agent, I dismiss the Tenants' Application without leave to reapply.

The Landlord's Agents testified the Notice of Dispute Resolution Package ("Materials") were served on the Tenants individually by registered mail on April 21, 2023. The Canada Post tracking numbers are provided on the first page of this Decision. Given the testimony and evidence provided to me, I find that pursuant to section 89 of the Act, the Landlord's Materials were sufficiently served to the Tenants.

The Landlord's Agents testified that they had not received the Tenants Materials. I note that no evidence relating to proof of service of the Materials was provided by the Tenants. Given this, I find that the Tenants' Materials were not served in accordance with section 89 of the Act.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenants?

#### Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord's Agents confirmed the following regarding the tenancy:

- The tenancy began on December 1, 2022.
- Rent is \$1,500.00 per month due on the first day of the month.
- A security deposit of \$750.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

The Landlord's Agents testified as follows. The Landlord received only \$750.00 of the \$1,500.00 rent due on April 1, 2023. The portion of rent received was paid by a government ministry. The Notice was served on April 2, 2023 by attaching to the door of the rental unit. A copy of the Notice was entered into evidence by the Landlord. The Notice is signed April 2, 2023 and provides an effective date of April 15, 2023. A witnessed Proof of Service form was entered into evidence by the Landlord.

Since the Notice was issued, the Landlord received a payment of \$750.00 on May 1, 2023 which again came from the government. A receipt for "use and occupancy" was issued to the Tenants following the receipt of this payment.

As of May 1, 2023, the Tenants owe \$1,500.00 in outstanding rent. The Landlord seeks a Monetary Order for this amount and an Order of Possession.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Based on the undisputed testimony of the Landlord's Agents, I find that rent due on April 1, 2023 was not paid in full. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I accept the Landlord's Agent's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenants receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). I also find that the Notice

complies with the form and content requirements of section 52 of the Act. As a result, the Landlord's Application is granted.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. The Tenants have two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on April 15, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$1,500.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenants.

As the Landlord has been successful in their Application, I order the Tenants to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

### Conclusion

The Landlord's Application is granted. The Tenants' Application is dismissed without leave to reapply.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenants. If the Tenants do not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

The Order is summarized below.

<b>Item</b>	<b>Amount</b>
Unpaid rent	\$1,500.00
Filing fee	\$100.00
Less: security deposit	(\$750.00)
<b>Total</b>	<b>\$850.00</b>

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: May 25, 2023

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Residential Tenancy Branch