



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      Tenants:      **CNR, MNRT, RR, RP, PSF, OLC**  
Landlord:      **OPR-DR, MNR-DR**

### Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") under Sections 46 and 55 of the Act;
2. An Order for the Landlord to pay the Tenants back for the cost of emergency repairs made during the tenancy under Section 67 of the Act;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided under Section 65 of the Act;
4. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed under Section 32 of the Act;
5. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law under Section 62(3) of the Act; and,
6. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for the 10 Day Notice under Sections 46, 55 and 62 of the Act; and,
2. A Monetary Order to recover money for unpaid rent under Sections 26, 46 and 67 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full

opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's 10 Day Notice served by attaching it to the Tenants' front door, and by putting a copy in their mailbox on January 5, 2023, the Tenants confirmed receipt, deemed served on January 8, 2023; and,
- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by attaching a copy to the Landlord's front door on January 12, 2023, the Landlord confirmed receipt, deemed served on January 15, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

The Landlord stated he served his Notice of Dispute Resolution Proceeding package (NoDRP) by leaving a copy of it in the Tenants' mailbox on March 3, 2023. The Landlord did not upload a proof of service, and the Tenants did not confirm receipt of the Landlord's NoDRP. The RTB notice on February 28, 2023 stated that the Landlord must serve separate NoDRPs to each Tenant no later than March 3, 2023.

Pursuant to Section 89(2) of the Act, an application for dispute resolution under Section 55 of the Act, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

As the Landlord did not properly serve the Tenants with his NoDRP package, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Landlord's application against the Tenants.

I dismiss all the Landlord's claims in his application; however, the Order of Possession and Monetary Award result will be the same in this matter.

#### Preliminary Matter

##### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute in their application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice at this proceeding. I dismiss all the Tenants' claims related to the possession of the unit without leave to re-apply as these will be dealt with in this application. The Tenants' claim for an Order for compensation for a monetary loss is dismissed with leave to re-apply.

#### Issues to be Decided

1. Cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful is the Landlord entitled to an Order of Possession and a Monetary Order?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on February 16, 2022. The fixed term ended on January 31, 2023, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,400.00 payable on the first day of each month. A security deposit of \$1,200.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$7,500.00 in outstanding rent on January 1, 2023. The effective date of the 10 Day Notice was January 15, 2023.

The Landlord said the Tenants have a history of not paying rent in full since the beginning of the tenancy. He stated, on a promise that they would be paying the rent outstanding in October 2022, when the Landlord went to collect all the rent, the Tenants did not pay anything.

The Tenants said they had paid March 2022's rent completely because the Landlord would not give them the keys until their rent was paid. After that time, they made rent payments in advance of the month owing. Typically, the male Tenant paid \$1,000.00 near the beginning of the month, then paid another \$1,000.00 two weeks later. The female Tenant paid \$400.00 when she received her child tax credit on the 20<sup>th</sup> of most months.

The female Tenant said she did not pay her \$400.00 from the child tax credit on August 20, 2022, and that is when they started getting behind.

On September 27, 2022, the Tenants pointed to a text message from the Landlord which stated that September's rent was paid in full and that \$750.00 was paid towards the arrears. The female Tenant testified that her \$400.00 child tax credit payment was incorporated in the \$750.00 arrears rent payment on September 26, 2022.

The parties gave me their verbal evidence of when rent was due, what amounts were paid, and on what dates. The following table sets out their verbal evidence:

RENT	Rent Owing	Rent/Partial Amount Paid		Dates Tenants paid rent	O/S Rent Total	O/S Rent Total
		Landlord	Tenants		Landlord	Tenants
March 2022	\$2,400.00	\$1,960.00	\$2,400.00		\$440.00	\$0.00
			\$960.00	March 15		-\$960.00
			\$400.00	March 20		-\$1,360.00
			\$1,040.00	March 31		-\$2,400.00
April 2022	\$2,400.00	\$2,600.00	\$450.00	April 1	\$240.00	-\$450.00
			\$1,150.00	April 18		-\$1,600.00
			\$1,000.00	April 29		-\$2,600.00
			\$400.00	April 20		-\$3,000.00
May 2022	\$2,400.00	\$1,000.00	\$1,000.00	May 17	\$1,640.00	-\$1,600.00
			\$400.00	May 20		-\$2,000.00
June 2022	\$2,400.00	\$2,000.00	\$1,000.00	June 2	\$2,040.00	-\$600.00
			\$1,000.00	June 19		-\$1,600.00
			\$400.00	June 20		-\$2,000.00
July 2022	\$2,400.00	\$1,250.00	\$1,000.00	July 4	\$3,190.00	-\$600.00
			\$1,000.00	July 18		-\$1,600.00
			\$400.00	July 20		-\$2,000.00
August 2022	\$2,400.00	\$1,000.00	\$1,000.00	August 1	\$4,590.00	-\$600.00
			\$1,000.00	August 23		-\$1,600.00
September 2022	\$2,400.00	\$0.00	\$1,000.00	September 1	\$6,990.00	-\$200.00
			\$400.00	September 6		-\$600.00
			\$1,000.00	September 26		-\$1,600.00
			\$750.00	September 26		-\$2,350.00
			\$825.00	September 28		-\$3,175.00
October 2022	\$2,400.00	\$200.00	\$375.00	October 5	\$9,190.00	-\$1,150.00
			\$400.00	October 20		-\$1,550.00
			\$1,000.00	October 25		-\$2,550.00
			\$300.00	October 28		-\$2,850.00
November 2022	\$2,400.00	\$0.00	\$500.00	November 4	\$11,590.00	-\$950.00
			\$400.00	November 4		-\$1,350.00
			\$700.00	November 14		-\$2,050.00
			\$600.00	November 28		-\$2,650.00
December 2022	\$2,400.00	\$0.00	\$600.00	December 9	\$13,990.00	-\$850.00
			\$900.00	December 19		-\$1,750.00
January 2023	\$2,400.00	\$0.00	\$540.00	January 18	\$16,390.00	\$110.00
February 2023	\$2,400.00	\$0.00	\$0.00		\$18,790.00	\$2,510.00
March 2023	\$2,400.00	\$0.00	\$0.00		\$21,190.00	\$4,910.00
April 2023	\$2,400.00	\$0.00	\$0.00		\$23,590.00	\$7,310.00
May 2023	\$2,400.00	\$0.00	\$0.00		\$25,990.00	\$9,710.00
TOTAL OUTSTANDING RENT:					\$25,990.00	\$9,710.00

The Landlord stated that the Tenants do not have permission to withhold rent, and the Tenants have not received an Order from an Arbitrator authorizing them to withhold rent.

The Tenants stated the Landlord turned off the water and power to the rental unit on February 8, 2023.

The Tenants stated that they do not have permission to withhold rent, but the Tenants have received an Order from an Arbitrator authorizing them to withhold rent. The file number of that decision is copied on the cover sheet of this decision. In that decision, which was for emergency repairs, the Arbitrator authorized the Tenants to withhold \$77.00 in rent, per day, for each day that the repairs remain uncompleted beyond a 6-day period after May 1, 2023. At this day's hearing, the Tenants stated that no one has been to the rental unit to make the emergency repairs.

The Tenants testified that the Landlord was always giving them a different email address to send their rent etransfers. The female Tenant stated the Landlord stopped communicating with the Tenants and has not told them where to send their rent payments.

The Landlord said the excuses for the lack of rent payments were that they were always paid in cash. He argued that he never received \$400.00 cash payments from the female Tenant.

The Landlord seeks an immediate Order of Possession and a Monetary Order for unpaid rent.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

***Landlord's notice: non-payment of 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.*
- ...

The Landlord's 10 Day Notice was deemed served on January 8, 2023. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on January 8, 2023 within the five days after receiving the notice.

The Landlord gave very different evidence of rental payments compared with the Tenants. The Tenants said the Landlord would not provide them with the keys to the rental unit until they had paid March 2022's rent in full. The Tenants pointed to a text which stated that September 2022's rent was paid in full. The Landlord did not testify that the Tenant's paid September's rent in full. The female Tenant stated that she paid \$400.00 cash to the Landlord on the 20<sup>th</sup> of each month which came from the child tax benefit she receives. The Tenant said she did not pay the August \$400.00 cash payment, and that is when their rent payments got behind. I believe the Tenants.

I find the Tenants' evidence more credible than the evidence of the Landlord. The Tenants are in arrears totalling \$9,710.00 as of May 31, 2023. Still in January 2023 when the Tenants received the 10 Day Notice, they were in arrears, and have remained in arrears since the beginning of the year. They said they stopped paying rent because the Landlord turned off the water and the power. Section 26(1) of the Act states rent

must be paid when rent is due whether or not the Landlord complies with the Act, Regulation or tenancy agreement.

The Landlord testified that the Tenants do not have permission from the Landlord or an Arbitrator to withhold rent. The Tenants testified that they do not have permission from the Landlord to withhold rent. The Tenants stated that they do have an Arbitrator's order authorizing them to withhold rent which will go into effect on May 7, 2023 if the Landlord has not completed the emergency repairs. I cannot take into consideration this rent withholding as this hearing was conducted on May 4, 2023 which was before the effective date of the emergency repairs decision, and I do not have evidence after this hearing date.

I find on a balance of probabilities that the 10 Day Notice is valid, and I dismiss the Tenants' application to cancel the 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

**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.*

*(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.*

I have upheld the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants.



The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. I find the total outstanding rent amount is \$9,710.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, which was \$7,500.00, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$9,710.00
Less security deposit:	-\$1,200.00
TOTAL OWING:	\$8,510.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$8,510.00. 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 of British Columbia 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: June 02, 2023

---

Residential Tenancy Branch