



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### Introduction

This hearing dealt with cross-applications filed by the parties. On May 11, 2023, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On May 18, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on July 4, 2023.

The Landlord attended the hearing; however, neither Tenant made an appearance at any time during the 34-minute teleconference. At the outset of the hearing, the Landlord provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:34 AM. Only the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord was the only other person who had called into this teleconference.

As the Tenants did not attend the hearing, I dismiss the Tenants’ Application for Dispute Resolution in its entirety.

The Landlord advised that he served two, separate Notice of Hearing and evidence packages to Tenant W.E. by hand on May 26, 2023; however, he did not have any proof of service to corroborate this service. Regardless, based on this solemnly affirmed undisputed testimony, I am satisfied that these packages were duly served to each Tenant. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on June 2, 2022, that rent was owed in the amount of \$2,850.00 per month, and that it was due on the first day of each month. He stated that he is unsure if the Tenants have abandoned the rental unit already, but he confirmed that he has not received the keys back. As well, he submitted that a security deposit of \$1,425.00 and a pet damage deposit of \$1,425.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He testified that the Notice was served to the Tenants by being placed in their mailbox on May 9, 2023, and he referenced a signed proof of service form to corroborate service. The Notice indicated that \$7,525.00 was owing for rent on May 1, 2023. As well, the effective end date of the tenancy was noted as May 20, 2023, on the Notice.

He then advised that the Tenants would ordinarily pay their rent by e-transfer; however, they have been in arrears for paying rent since almost the start of the tenancy. He referenced a copy of the Tenants' Payment Statement, that was submitted as documentary evidence, to demonstrate the lack of payments and how the rental arrears were calculated.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that this was a valid Notice.

The undisputed evidence before me is that the Notice was placed in the Tenants' mailbox on May 9, 2023. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants noted on their Application that they received the Notice on May 9, 2023, they must have paid the rent in full by May 14, 2023, or disputed the Notice by Monday May 15, 2023, at the latest. However, the undisputed evidence before me is that the Tenants did not pay any rent amount that they believed was owing in an attempt to cancel the Notice. Moreover, while the Tenants did file to dispute the Notice, they did not attend the hearing to provide evidence regarding this dispute. As there is no evidence before me that permitted the Tenants to withhold the rent, I find that they breached the *Act* and jeopardized their tenancy.

As I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, as the Tenants did not pay any rent they believed was owing to cancel the Notice, as the Tenants' Application was dismissed, and as the Tenants have not complied with the

Act, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the Act that takes effect **two days** after service of this Order on the Tenants.

Regarding the Landlord's claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$13,225.00** for the outstanding rental arrears, as outlined below.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the Act, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the Act, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears up to May 2023	\$7,525.00
Rental arrears for June 2023	\$2,850.00
Rental arrears for July 2023	\$2,850.00
Filing Fee	\$100.00
Security deposit	-\$1,425.00
Pet damage deposit	-\$1,425.00
<b>Total Monetary Award</b>	<b>\$10,475.00</b>

#### Conclusion

Based on the above, the Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Furthermore, I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$10,475.00** 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: July 5, 2023

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Residential Tenancy Branch