



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

File #: CNR-MT

File #: OPR-DR, MNRL, MNR-DR, MNDL, MNDCL, FFL

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10 Day Notice to End Tenancy for Unpaid Rent signed on June 2, 2023 (the “10 Day Notice”); and
- an order pursuant to s. 66 for more time to dispute the 10 Day Notice.

The Landlord files his own applications, with amendments, for the following relief under the Act:

- an order of possession pursuant to s. 55 after issuing the 10 Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent;
- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests;
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

E.E. attended as the Landlord. Neither tenant attended the hearing. The hearing was conducted as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

### Service of Documents

The Landlord advised that he served his application and evidence via registered mail sent on June 19, 2023. The Landlord further advises that he served his first amendment on via registered mail sent on September 5, 2023 and the second amendment via registered mail sent on September 27, 2023.

I find that the Landlord served his application and evidence on the Tenants in accordance with ss. 88 and 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that these documents were received by the Tenants on June 24, 2023.

The Landlord acknowledges receipt of the Tenants' application without issue. Based on this acknowledgement, I find pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenants' application.

### Preliminary Issue – Landlord's Amendments

The Landlord served two amendments which either revised the unpaid rent claim or added additional monetary claims unrelated to the issue of unpaid rent.

Leaving aside issues of service of the amendments, I find that the additional monetary claims are not sufficiently related to the primary issue in dispute, which is whether the 10 Day Notice is enforceable and if there is any unpaid rent. Pursuant to Rule 2.3 of the Rules of Procedure, I sever the additional monetary claims for compensation and damage to the rental unit in the amendments with leave to reapply.

I further note that the Landlord's claim for unpaid rent may be amended at the hearing pursuant to Rule 4.2 of the Rules of Procedure as the increased arrears, if any, could be reasonably anticipated. As such, I consider the increased arrears regardless of whether the amendments were served.

### Issues to be Decided

- 1) Should the Tenants be given more time to dispute the 10 Day Notice?
- 2) Is the 10 Day Notice enforceable?
- 3) Is the Landlord entitled to a monetary order for unpaid rent?
- 4) Is the Landlord entitled to his filing fee.

## Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

### ***General Background***

The Landlord confirms the following details with respect to the tenancy:

- The Tenants moved into the rental unit on February 15, 2023.
- Rent of \$1,850.00 is due on the first day of each month.
- A security deposit of \$925.00 was requested from the Tenants but had not been paid.

I am provided with a copy of the tenancy agreement by the Landlord. The Landlord confirms the Tenants continue to reside within the rental unit.

### ***1) Should the Tenants be given more time to dispute the 10 Day Notice?***

The Tenant seeks more time to dispute the One-Month Notice. Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances. The extension cannot be granted if the application is made after the effective date in the notice has passed.

I am advised by the Landlord that he personally delivered the 10 Day Notice to the Tenants on June 2, 2023. I accept the Landlord's undisputed evidence. I find that the 10 Day Notice was served in accordance with s. 88 of the *Act* and received on June 2, 2023.

Pursuant to s. 46(1) of the *Act*, a notice to end tenancy issued for unpaid rent may be effective 10 days after it is received by a tenant. In this instance, the effective date, as listed in the 10 Day Notice, was June 12, 2023.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application on June 15, 2023. Accordingly, I find that the Tenants filed their application for more time to dispute the 10 Day Notice after the effective date of June 12, 2023, such that their claim for said relief is barred by s. 66(3) of the *Act*.

The Tenants' request for additional time to dispute the 10 Day Notice is hereby dismissed without leave to reapply.

**2) *Is the 10 Day Notice enforceable?***

Section 55(1) of the Act provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession.

As per s. 46(2) of the Act, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the Act. I have reviewed the 10 Day Notice and find that it complies with the formal requirements of s. 52 of the Act. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, and sets out the grounds for ending the tenancy.

The Landlord used a previous version of Form RTB-30, though I do not find this to be fatal to the 10 Day Notice. All the relevant information is the same between both forms and the distinction between the old and new form is one of formatting. I find that the 10 Day Notice is in the approved form.

As the Tenants request for additional time to dispute the 10 Day Notice is dismissed, I find that the Tenants are conclusively presumed to have accepted the end of the tenancy as per s. 46(5) of the Act.

Accordingly, I grant the Landlord an order of possession under s. 55 of the Act, which shall be effective 2 days after it is received by the Tenants.

**3) *Is the Landlord entitled to a monetary order for unpaid rent?***

Under s. 67 of the Act, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the Act, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the Act, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The Landlord advised that the 10 Day Notice was issued the 10 Day Notice as the Tenants were behind on rent for May 2023 in the amount of \$370.00 and had failed to pay rent on June 1, 2023 altogether. The Landlord further advises that the Tenants paid \$370.00 to him on June 15, 2023, made payment on June's rent on July 1, 2023, and made payment for July's rent. I am provided with banking information confirming the payment of June 15, 2023. The Landlord advised that Tenants did not pay rent for August, September, and October.

I accept the Landlord's undisputed testimony with respect to the payment of rental arrears. Since the conclusive presumption applies, the tenancy ended on June 12, 2023 and the Tenants have been overholding since that date. I find that by failing to vacate the rental unit in breach of the *Act*, the Landlord has proven entitlement to lost rental income for the months of August, September, and October. I find that the amount owed for these months is the same as what rent ought to have been paid under the tenancy agreement. I further find that mitigation was impossible as the Tenants continued to reside within the rental unit.

I find the Landlord has proven he is entitled to a monetary order in the amount of \$5,500.00 and shall receive that order. I note that the Landlord does not list both co-tenants in his application, such that the monetary order may only be enforced against the Tenant N.J., who is the sole respondent named in the Landlord's application. I note that I may do so as the Tenants are jointly and severally liable such that granting the order against the Tenant N.J. alone is permissible.

I have considered the application of s. 55(1.1) of the *Act*, which permits orders of unpaid rent when a tenant's application disputing a notice for unpaid rent has been dismissed. However, I decline to make use of that section because s. 55(1.1) is limited to unpaid rent owed under the tenancy agreement rather than lost rental income flowing from failure to vacate after the effective date. This interpretation is consistent with Policy Guideline #3.

I make this note because I cannot grant the Landlord his compensation under s. 55(1.1) of the *Act*, thus I cannot grant the order against the co-tenants as named in the Tenants application, since the tenancy ended on June 12, 2023. Again, the amount granted is for lost rental income after the tenancy ended, not unpaid rent under s. 55(1.1) informed by the interpretation from Policy Guideline #3.

**4) Is the Landlord entitled to his filing fee.**

As the Landlord was successful, I grant him his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the respondent to the Landlord's application, being the Tenant N.J., pay the Landlord's \$100.00 filing fee.

Conclusion

I dismiss the Tenants' claim for additional time to dispute the 10 Day Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to the 10 Day Notice. I order under s. 55 of the *Act* that the Tenants provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

I grant the Landlord a monetary order for unpaid rent totalling \$5,550.00 and order this amount be paid by the Tenant N.J..

I grant the Landlord his filing fee of \$100.00, which shall be paid by the Tenant N.J..

In total, I order that the Tenant N.J. pay **\$5,650.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court. If the Tenant N.J. does not comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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: October 13, 2023

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Residential Tenancy Branch