



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**FFL MNDCL MNDL MNRL OPR  
CNR DRI LAT LRE MNDCT MNRT**

### Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The landlord applied for:

Authorization to recover the filing fee for this application from the tenant pursuant to section 72;

A monetary order for damages or compensation pursuant to section 67;

A monetary order for damage to the rental unit pursuant to section 67;

A monetary order for rent pursuant to section 67; and

An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The tenant applied for:

An order to cancel a 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46;

An order to dispute a rent increase pursuant to section 41;

An order to change the locks to the rental unit pursuant to section 31;

An order to suspend a landlord’s right to enter the rental unit pursuant to section 70;

A monetary order for damages or compensation pursuant to section 67; and

A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

The landlord attended the hearing and was assisted by an agent, ND (“tenant”). The tenant attended the hearing and was assisted by an agent, NW (“tenant”). As both parties were present, service of documents was confirmed. Both parties acknowledge receipt of each others’ Applications for Dispute Resolution Proceedings however neither party acknowledges receiving the others’ evidence.

### Preliminary Issue

Neither party provided proof, satisfactory to the arbitrator, that they had served the opposing party with their evidence as required by Rule 3 of the Residential Tenancy Branch Rules of Procedure. In accordance with rule 3.5, I declined to accept any documentary evidence provided by either party and ruled that the only evidence to be considered for this decision would be the oral testimony of the parties.

### Preliminary Issue

Rules 6.1, 6.2 and 2.3 pertain to the hearing of a dispute resolution proceeding, reproduced below.

#### **6.1 Arbitrator's role**

The arbitrator will conduct the dispute resolution process in accordance with the *Act*, the Rules of Procedure and principles of fairness.

#### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

#### **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.

I determined that the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and the landlord's application for an Order of Possession were sufficiently related and would be heard together at this hearing. The landlord's application for a monetary order for unpaid rent was also sufficiently related to the matter of the Notice and would be likewise heard. The remaining issues of both the tenant's and landlord's Applications for Dispute Resolution were dismissed with leave to reapply.

The tenant also made an oral application to amend his claim to include emergency repairs. I determined this was not sufficiently related to the Notice to End Tenancy and would not be heard at today's hearing.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") be upheld or cancelled?

Background and Evidence

The landlord gave the following testimony. The rental unit is the upper floor of a home that has a basement unit. The tenant occupies the upper unit and the landlord is in the lower unit. There are separate kitchen facilities and bathrooms for both each unit.

There is no written tenancy agreement. The tenant pays rent of \$400.00 per month on the first day of the month. The tenant stopped paying rent in May 2019. The landlord testified the tenant had always paid rent in cash up until April 2019 but since then she has received nothing. The tenant has not paid rent between the months of May to September and on September 4, 2019 the landlord served the tenant with the Notice. The tenant acknowledges receiving the Notice on September 4<sup>th</sup>.

No copy of the Notice was provided, however the parties agree it is signed and dated September 4<sup>th</sup>. The rental unit address is listed and indicates an effective (move-out) date of September 4<sup>th</sup>. On the Notice, it says rent in the amount of \$1,600.00 was due as of September 1, 2019. The landlord testified this reflects unpaid rent for May, June, July, August and September 2019. The landlord acknowledged later in the hearing that this was a miscalculation on his part and the arrears for five (5) months rent should have specified \$2000.00, not \$1,600.00.

The landlord testified that since moving in, the tenant has blocked her access to the mailbox, forcing her to receive her mail by PO box. Mail originally intended for her is being intercepted by the tenant and the tenant has also put up a sign to advise Canada Post to misdirect the landlord's mail. She acknowledges she has not provided the tenant with formal written notice that her mailing address is different from that of the house.

The landlord testified that her bank confirmed that no rent was received from the tenant since April 2019. No deposits for rent were made, no cheques have cleared and no

copies of cheques stamped by the bank have been provided to him as proof of payment.

The tenant provided the following testimony. He has been paying rent by cheque sent via registered mail to the landlord's address, not the PO Box stated by the landlord. He always sends the next month's rent just before the end of the month. Below is the tenant's evidence of his registered mailings.

<b>Rent due</b>	<b>Rent paid</b>	<b>Sent by</b>	<b>Tracking number</b>
May 1	April 30, April 29	Registered mail	None provided
June 1	May 29	Registered mail	RN 401 ... 239 CA
July 1	July 1	Certified mail	0429...9075
August 1	Aug 1	Registered mail	RN 361 ... 255 CA
Sept 1	Sep 1	Registered mail	RN 361 ... 255 CA
Oct 1	Sep 1	Registered mail	RN 361 ... 966 CA

The tenant testified that although he sends the cheques by registered mail, he cannot verify if the money is coming out of his account. It's the landlord's responsibility to ensure the rent is received. While he sends the cheques to the landlord by registered mail, sometimes he gets delivery notifications indicating the items were not picked up. The tenant testified the landlord is selective at the post office in which items she will accept delivery of. When items are not accepted by the landlord she steals the tenant's notifications to pick up undelivered items that Canada Post sends him. The tenant also testified Canada Post shreds his documents that he did not come pick up as undelivered.

#### Analysis – Order of Possession

I find the tenant was served with the 10 Day Notice on September 4, 2019 in accordance with sections 89 and 90 of the *Act*. He filed to dispute this Notice on September 9, 2019, within 5 days of being served in accordance with section 46.

Pursuant to section 6.6 of the Residential Tenancy Branch Rules of Procedure, 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove

the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case the landlord must show the tenant failed to pay the \$1,600.00 in rent that was due by September 1<sup>st</sup> as stated in the Notice she served him on September 4<sup>th</sup>. The tenant has provided evidence that he sent the landlord his rent cheques every month. Using the tracking numbers provided by the tenant in his testimony, I determined that for each mailing, the registered mail was returned to the sender. In this case, this is the tenant. To be clear, the landlord did not receive any rent for the months the tenant says he sent cheques by registered mail.

The tenant has shown that while he has fulfilled his obligation to send the rent to the landlord; the tenant has also provided me with proof that his cheques were not received by the landlord. The tenant's evidence conclusively proves rent was not paid for the months in question. I am satisfied that the landlord has shown that on a balance of probabilities, the tenant has not paid the rent as required under section 26 of the *Act*. As such I uphold the landlord's 10 Day Notice to End Tenancy for Unpaid Rent issued on September 4, 2019 pursuant to section 46 of the *Act*.

Section 46(2) of the *Act* states a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. The parties testified the Notice is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I find the Notice complies with section 52, however I note the effective date of September 4, 2019 on the Notice is incorrect, as the landlord points out. Pursuant to section 53 of the *Act*, the effective date is automatically changed to September 14, 2019, ten days after the tenant acknowledges receiving the Notice. As this date has already passed, I issue an Order of Possession effective two days after service on the tenant.

#### Analysis – Monetary Order

As stated previously, the tenant has provided the evidence to satisfy me that he did not pay rent for May to October 2019. Section 67 of the *Act* states if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. I award the landlord six months rent for this period from May to October at \$400.00 per month for an award of **\$2,400.00**.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 issue a monetary order in the landlord's favour in the amount of **\$2,500.00**.

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 18, 2019

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Residential Tenancy Branch