



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPU MNDL-S MNRL-S MNCL-S FFL  
For the tenant: CNR MNRT MNDCT OLC LRE LAT FFT

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession based on unpaid utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for damages to the unit, site or property, for authorization to retain all or part of the tenant's security deposit and pet damage deposits, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2019 (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for a monetary claim for the cost of emergency repairs, for compensation for damage or loss under the Act, regulation or tenancy agreement, to provide services or facilities required by law, for an order to suspend or set conditions on the landlord's right to enter the unit, site or property, for authorization to change the locks to the rental unit, and to recover the cost of the filing fee.

The tenant, the landlord, and an agent for the landlord (agent) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act. Both parties confirmed that they had been served with the application from the other party.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant and landlord indicated several matters of dispute on their respective applications, the most urgent of which I find to be to determine if the tenancy is going to continue and any unpaid rent. I find that not all the claims in the applications before me are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and their filing fee, and the landlord's request for an order of possession for unpaid rent or utilities, for unpaid rent, and to their filing fee. The balance of the applications are **dismissed, with leave to re-apply**.

The parties were advised that the decision would be emailed to the parties at the email addresses confirmed during the hearing. Any orders will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to a monetary order under the Act for unpaid rent, and if so, in what amount?
- Is either party entitled to the return of their filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. During the hearing, the parties reached a mutually settled agreement regarding the end of tenancy date pursuant to section 63 of the Act. As a result, I will address the settlement agreement last.

Regarding the unpaid rent, the parties agreed that for November and December of 2019, and January of 2020, the monthly rent was \$1,500.00 per month. The tenant confirmed that they did pay rent to the landlord for November and December of 2019, and for January 2020. The tenant also confirmed that they did not have an order from an arbitrator to not pay rent to the landlord. The landlord is seeking \$4,500.00 in unpaid rent for November and December 2019, and January 2020, comprised of \$1,500.00 for each of the three months.

### *Mutually Settled Agreement*

The parties agreed on the following mutually settled agreement during the hearing:

1. Both parties agree that the tenancy shall end on **January 18, 2020 at 1:00 p.m. Pacific Standard Time (PST)**. The landlord is granted an order of possession effective January 18, 2020 at 1:00 p.m. PST.
2. The parties agree to meet at the rental unit at 1:00 p.m. PST on January 18, 2020 for the purposes of completing an outgoing Condition Inspection Report and for the return of the rental unit keys.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Section 26 of the Act applies and states:

**Rules about payment and non-payment of rent**

**26(1)** 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.

Based on the above, I find the tenant failed to provide sufficient evidence that they were authorized to withhold rent for the months of November and December of 2019 and January 2020. Therefore, I find the landlord has met the burden of proof and that the tenant owes **\$4,500.00** in unpaid rent comprised of \$1,500.00 for each of the following months:

1. November 2019
2. December 2019
3. January 2020

I have reached this finding as the tenant continues to occupy the rental unit as of the date of this hearing and rent is due on the first day of each month. As a result, I dismiss the tenant's application to cancel the 10 Day Notice. I find that the 10 Day Notice dated is valid and I uphold the 10 Day Notice based on the above.

**Order of Possession** – As noted above, the parties reached a mutually settled agreement regarding the end of tenancy date. Therefore, pursuant to section 63 of the Act, the landlord is granted an order of possession effective January 18, 2020 at 1:00 p.m. PST. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court. The parties confirmed that their mutually settled agreement was made without pressure, and was final and binding between the parties.

As the tenant's claim was dismissed, I do not grant the tenant their filing fee.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act.

**Monetary Order** – I find the landlord has established a total monetary claim of **\$4,600.00**, comprised of \$4,500.00 in unpaid rent, plus the \$100.00 filing fee. As the landlord stated that they do not wish to offset the tenant's security deposit and pet damage deposit from their monetary claim, I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of **\$4,600.00**.

### Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply, due to insufficient evidence.

The landlord has been granted an order of possession effective January 18, 2020 at 1:00 p.m. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court. The tenancy ends on January 18, 2020 at 1:00 p.m. by mutually settled agreement.

The landlord has established a total monetary claim of \$4,600.00, as described above. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order and order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 13, 2020