



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **TT: CNR, MNDCT, RP**  
                             **LL: FFL, OPRM-DR**

### Introduction

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

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- A monetary award for damages and loss pursuant to section 67; and
- An order for repairs pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent dated September 2, 2020, the landlord’s application and evidence. Based on the testimony I find the tenant duly served with the materials in accordance with sections 88 and 89 of the Act.

The tenant testified that they served the landlord with their application and evidence by email, despite email not being a permitted method of service under the *Act* and expressly being denied leave to serve the landlord by email in the decision of an

adjudicator on October 1, 2020 in response to their application for substituted service. The tenant testified that they also served the landlord by mail though they provided no documentary evidence in support. The landlord disputed that they were served with the tenant's materials by either of these methods.

Nevertheless, the landlord confirmed that they were aware of the nature and contents of the tenant's claim and was prepared to proceed. As I find there is no prejudice to the parties or subversion of the principles of natural justice and procedural fairness, I find that the landlord was sufficiently served with the tenant's materials in accordance with section 71 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and the total amount of the rental arrear as at the date of the hearing is \$2,390.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlord's monetary claim from \$1,195.00 to \$2,390.00 as the additional amount of rent arrears could be reasonably anticipated.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to make repairs to the rental unit?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in April, 2020. Monthly rent is \$1,695.00 payable on the first of each month. A \$500.00 portion of the monthly rent is paid directly to the landlord from the provincial government.

The tenant confirmed that they have not paid any rent for the months of September and October, 2020. The tenant testified that they believe they are entitled to withhold rent as they feel the rental unit requires repairs to be made. The tenant specifically cited a need to install fire alarms in the rental unit.

The tenant seeks a monetary award of \$1,850.00 and writes in their application:

I AM SEEKING \$250.00 PER X 4 MONTHS FOR DISTURBANCE FROM TENANTS DOWNSTAIRS. (DRUG USE, CIGARETTE SMOKE, DRUG TRAFFICKING, FIGHTING, PARTYING) + \$350 + \$500 FOR LANDSCAPING.

The landlord testified that there was a rental arrear of \$1,195.00 as at September 2, 2020 when they issued the 10 Day Notice. The landlord testified that as at the date of the hearing, October 23, 2020 there is an arrear of \$2,390.00.

### Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have not paid any rent for September and October 2020 for this tenancy.

Pursuant to 26(1) of the *Act*, 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.

The tenant submits that they chose to withhold rent as they were dissatisfied with the condition of the rental unit and felt the landlord ought to make necessary repairs. I find that the tenant's position is not supported in the *Act*. I find that the tenant's grievances do not give rise to a basis to withhold the payment of monthly rent.

I accept the evidence of the parties that the rent has not been paid in full within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss this portion of the tenant's application. I find the landlord's 10 Day Notice meets the form and content

requirements of section 52 of the Act as it is in the prescribed form, is signed and dated by the landlord and indicates the reason for the tenancy to end-the unpaid rent.

As such, I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order effective 2 days after service.

As this tenancy is ending I find it unnecessary to make a finding on the portion of the tenant's application pertaining to an ongoing tenancy seeking repairs. This portion of the application is dismissed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that monthly rent for this tenancy is \$1,695.00 and that the tenant has failed to pay rent for the months of September and October, 2020. I accept the evidence of the parties that the landlord has received some payment towards rent from a provincial government subsidy program and that there is an arrear of \$2,390.00 as at the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour in that amount.

I find the tenant has not met their evidentiary burden for their monetary claim. Their submission consists of unproven complaints and arbitrary monetary amounts with little evidence in support. The tenant provided no documentary evidence in support of their monetary claim. I do not find the tenant's submission to have any substance or air of reality. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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 \$2,490.00, allowing for the recovery of unpaid rent and filing fee. The tenant must be served with this Order as soon as possible. Should the tenant 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: October 23, 2020

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Residential Tenancy Branch