



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant application 1: CNR, RR, RP, PSF, LRE  
Tenant application 2: CNC-MT

### **Introduction**

This hearing dealt with the tenant's two applications for dispute resolution under the Residential Tenancy Act (Act) for:

In his first application, made on February 10, 2021, the tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- a reduction in monthly rent;
- an order requiring the landlord to make repairs to the rental unit;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

In his second application, made on March 12, 2021, the tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the landlord; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

While the two, separate applications of the tenant were scheduled at the same time and referred to as a cross application, this is incorrect. Under the Residential Tenancy

Branch Rules of Procedure (Rules), a respondent, the landlord here, may file an application for dispute resolution to respond to an existing, related application, if the issues are related. This would be a cross application.

Despite this, I elected to proceed on both the tenant's applications in this hearing.

The landlord said she served the tenant with her evidence on May 9, 2021, by hand delivery by another tenant. The tenant said he did not serve his evidence to the landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

In his application requesting an order cancelling the One Month Notice, the tenant filed a request for an adjournment, due to the landlord's additional claims. The evidence submitted by the tenant to support this request was a monetary order worksheet, filed by the landlord with her evidence.

I note that the monetary order worksheet filed by the landlord listed unpaid monthly rent for February, March and May 2021, along with late fees, cleaning and repairs.

During the hearing, I informed the tenant his request for an adjournment was denied, due to the request being made the day of the hearing.

I further informed the landlord during the hearing that I would not be addressing her monetary issues, as she did not make an application for dispute resolution herself. The landlord was informed that I could only address the applications before me, which were the tenant's two applications.

The landlord is informed that monetary order worksheets are typically used as evidence in an applicant's application for monetary compensation. Despite being told this multiple times in the hearing, the landlord did not agree and raised the issue multiple times.

Additionally, Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the first application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice. The balance of the tenant's application will be addressed later in this Decision.

I informed the parties of this decision at the hearing.

Additionally, the parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and/or the One Month Notice?

#### Background and Evidence

This tenancy began on October 1, 2020, monthly rent was \$600 due on the first day of the month, and the tenant paid a security deposit of \$300. Filed in evidence was a written tenancy agreement.

The rental unit is a room located in the basement of the residential property, owned and occupied by the landlord in the upper suite. The tenant has a single room occupancy and there are two other separate tenants renting rooms in the basement suite.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules states the landlord is to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The evidence was that the 10 Day Notice was attached to the tenant's door on February 2, 2021, listing a move-out date of February 12, 2021, an unpaid monthly rent in the amount of \$600, which was due on February 1, 2021. The tenant submitted that he

received the Notice on February 6, 2021, and made his application on February 10, 2021. Filed in evidence was a copy of the 10 Day Notice.

The landlord asserted that since the issuance of the Notice, the tenant did not pay the monthly rent for February, March or May 2021, and did pay the monthly rent for April 2021, in cash. The landlord submitted that the tenant owes a total rent deficiency of \$1,800 through the day of the hearing.

The landlord submitted that she informed the tenant at the beginning of the tenancy that she preferred rent payments in cash or check as her e-transfer is not always functional. The landlord submitted that the tenant paid two months in a row with e-transfer and her email/bank allowed her to accept it.

The landlord submitted that at the end of January, her e-transfer was not working. The landlord submitted that she informed the tenant her e-transfer was not working and she required rent payments in cash or by check instead. Despite the request, according to the landlord, the tenant sent an e-transfer, which she could not accept.

When asking the tenant about this, the tenant replied that there was nothing in the tenancy agreement requiring him to pay by cash or check. The landlord submitted that it was made clear to the tenant that her e-transfer sometimes worked and sometimes did not work. The landlord said that her bank blamed her service provider and her service provider blamed the bank.

The landlord submitted that she has sent many messages to the tenant explaining the e-transfer issues and despite claiming he has the funds, the tenant refuses to pay monthly rent any other way.

*Tenant's response-*

In response, the tenant submitted he made reasonable attempts to pay the monthly rent in February 2021, but the landlord refused. The tenant submitted that it is not stipulated in the tenancy agreement that rent had to be paid in cash and therefore he was not required to do so. Filed in evidence was a text message exchange on February 1, 2021, in which the landlord said she could not take e-transfers, that he needed to bring cash and that the tenant was told before the tenancy began that she did not take e-transfers for rent.

The tenant submitted that he called to the RTB and was informed that as the landlord accepted monthly rent previously by e-transfer, he was allowed to continue to do so.

The tenant submitted he has all the monthly rent payments available, in trust.

The tenant confirmed that the monthly rent for March and May has not been paid, and also confirmed paying the monthly rent for April in cash. As to the May rent, the tenant said he wanted to wait for his hearing before paying the monthly rent for May.

The tenant submitted that it was not fair to him that he had to get cash or a check for rent payments, as he does not like to leave his rental unit often and be around people as well as due to the transportation issues.

### Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached on February 2, 2021, and deemed received on February 5, 2021, absent evidence to the contrary. The tenant submitted he received the Notice on February 6, 2021.

Therefore, I find that the Notice effective date is February 16, 2021, 10 days after the date the tenant received the Notice.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the 10 Day Notice was issued. Further, I find that he did not pay the rent owed to the landlord within five days of receiving the Notice in a manner required by the landlord.

The tenant claimed that he met his obligation to pay the monthly rent for February 2021, as he had sent an e-transfer to the landlord.

In this case, I find the evidence shows the tenant was informed by the landlord that she could no longer accept e-transfers for rent payments. While the landlord may have been able to accept e-transfers previously, I find the consistent evidence is that she told the tenant that her ability to accept e-transfers was sporadic and that he should make future payments in cash or with a check. I find many text message requests to the tenant requesting the rent payments, and the tenant failed to do so, due to his reliance, he said, on a conversation with an RTB staff member. While I was not present for that conversation, the tenant said the landlord could not prevent him from paying by e-transfer, for the reason the landlord had accepted that payment previously and no requirement was in the written tenancy agreement.

In this case, the written tenancy agreement was silent as to the method of payment of rent; however, the written tenancy agreement and the Act are quite clear that the full rent must be paid on or before the due date. I do not find anything in the Act or Residential Tenancy Regulations that prevents a landlord from specifying how rent must be paid.

In this case, I find the evidence shows that the landlord offered the tenant many opportunities to pay the monthly rent, but the tenant chose not to pay the way the landlord instructed, although he said he had the funds available.

After two months, the tenant elected to pay the April rent in cash, and it was not clear why the tenant would not pay for rent in February and March in the same manner.

Overall, I find the landlord has the authority to set the terms for how a rent payment is made, and the tenant relied upon his belief that he could set the terms, to his detriment.

I find this tenancy is ending due to the tenant's failure to pay the monthly rent for February 2021.

For these reasons, I therefore find the landlord submitted sufficient evidence to support the Notice and it must be upheld.

I therefore dismiss the tenant's application seeking cancellation of the 10 Day Notice.

I order the tenancy ended on the corrected effective date of the Notice, or February 16, 2021.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

Under section 55(1.1) of the Act, if I have found the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and dismiss the tenant's application or uphold the landlord's notice, I must grant the landlord an order requiring the payment of unpaid monthly rent.

In this case, as I have dismissed the tenant's application and determined that the tenant owed a total of unpaid monthly rent of \$1,800, comprising \$600 for February, March and May 2021, each, I grant the landlord a monetary order in that amount.

Should the tenant fail to pay the landlord this amount without delay, the order must be served to the tenant for enforcement. Thereafter, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

As I have dismissed the tenant's application seeking cancellation of the 10 Day Notice, I also dismiss the tenant's application seeking cancellation of the One Month Notice, as the tenancy is ending. For this reason, the request of the tenant in his second application is now moot.

As I have dismissed the tenant's application and issued the landlord an order of possession of the rental unit, the tenancy is ending. I therefore dismiss without leave to reapply the remaining portions of the tenant's application for a reduction in monthly rent, an order requiring the landlord to make repairs to the rental unit, an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, and an order suspending or setting conditions on the landlord's right to enter the rental unit as these are issues dealing with what would be an ongoing tenancy.

### Conclusion

The tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply, as I have upheld the 10 Day Notice, as I find it was valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

The landlord has been issued a monetary order in the amount of \$1,800.

As to the tenant's request for orders for the landlord, these are issues dealing with an ongoing tenancy. As this tenancy is ending, I dismiss these portions of the tenant's application, without leave to reapply.

The tenant's application seeking cancellation of the One Month Notice is dismissed, without leave to reapply.

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: May 17, 2021

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Residential Tenancy Branch