



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR-MT, MNDCT, OLC**  
                                 **FFL, OPR-DR, MNR-DR**

### **Introduction**

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

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

The landlord applied for:

- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72;
- An Order of Possession for unpaid Rent by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent by direct request, pursuant to section 67.

Both the landlord and the tenant attended the hearing. The landlord was represented by an agent, his son, CL. The tenant was assisted by an interpreter, BY. Both parties were given oaths to tell the truth and were advised that recording of the hearing proceedings was prohibited. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act.

The tenant testified he received the landlord’s Application for Dispute Resolution and stated he had no concerns with timely service of documents. The landlord testified he received the tenant’s Application for Dispute Resolution on July 23<sup>rd</sup> when it was posted

to the landlord's door. I note the tenant's file contained no evidence and that all the evidence for this hearing was uploaded into the landlord's dispute resolution file.

At the commencement of the hearing, I advised the parties that the tenant's original application sought to dispute the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord's Application for Dispute Resolution seeks to end the tenancy based on the same notice. As the two applications were related, both the applications were heard in accordance with rule 6.2 of the Residential Tenancy Branch Rules of Procedure.

The tenant filed an amendment to his application on July 28, 2021, nine days before the commencement of this hearing. Since the amendment could not have been received by the landlord fourteen days before the hearing, and because the issues identified in the amendment were unrelated to the primary issue of whether or not the tenancy would continue, the tenant's amendment was dismissed with leave to reapply, pursuant to rules 4.6, 2.3 and 6.2.

#### Issue(s) to be Decided

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

#### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence. Only evidence uploaded to the Residential Tenancy Branch website by the landlord before July 29, 2021 and evidence uploaded by the tenant by July 22, 2021 was considered, in accordance with rules 3.14 and 3.15 of the rules of procedure.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. The rental unit is a basement unit located in the landlord's house. The landlord lives in the upper unit. The rental unit

was advertised at the beginning of March, 2021. The tenant agreed to rent the unit for an agreed to rent of \$800.00 per month, payable on the first day of each month. A deposit of \$400.00 was collected by the landlord which the landlord continues to hold. The tenant moved in on March 12, 2021, paying the landlord a pro-rated rent of \$516.00 which the landlord acknowledges receiving. The landlord testified there is no written tenancy agreement.

On March 31, the tenant called the landlord and when the landlord went down to collect rent for April, the tenant advised the landlord that he was unable to pay rent. The tenant asked the landlord to allow him to continue living in the unit until he can pay his rent. The landlord refused. On April 4, 2021, the landlord's agent/son served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("notice") by posting it to the tenant's door. A copy of the notice was provided as evidence. It states the tenant failed to pay rent in the amount of \$800.00 that was due on April 1, 2021. It is signed by the landlord and provides an effective date of April 14, 2021. Since serving the notice, the landlord has not received any rent money. The tenant is in arrears for April, May, June, July and August 2021.

The tenant testified that on March 31<sup>st</sup>, he went to the ATM and got \$800.00 rent out as cash. He called the landlord to come get it and when the landlord arrived, the landlord gave him a note telling him he had to move out by the end of April. (No copy of the note was supplied as evidence). The tenant wasn't sure he could find a suitable place by then, so he wouldn't make that promise. This upset the landlord, so the landlord vowed to disconnect the tenant's land line phone and internet. The tenant asked the landlord to negotiate with him and the landlord refused. That night, the landlord refused to take his \$800.00 cash for April rent. The landline phone and internet connection were also disconnected.

The tenant acknowledges he has not paid rent for May, June, July and August because his source of income comes from having access to the internet and phone which were disconnected by the landlord.

The landlord's agent testified there was a conflict between the landlord and the tenant since the beginning of the tenancy arising from alleged damage to the unit upon move-in. The landlord BL testified that he told the tenant that if the tenant agreed to move out at the end of April and paid rent for the month of April, the landlord would be willing to return April's rent and the tenant's security deposit. The landlord denies the tenant offered him the rent money of \$800.00 the night of March 31<sup>st</sup>, testifying that the tenant

told him he had no money to pay the rent. The tenant did not have \$800.00 in cash to offer the landlord.

### Analysis

The tenant did not dispute the landlord's testimony that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 4<sup>th</sup> by posting it to the tenant's door. In accordance with sections 88 and 90 of the Act, the notice is deemed served upon the tenant three days later, on April 7<sup>th</sup>. The tenant filed to dispute the notice within the required 5 days, on April 8<sup>th</sup> in accordance with section 46(4) of the Act which states:

- Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

### **The standard of proof and onus of proof**

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.

The landlord testified that on March 31<sup>st</sup>, the tenant did not have any cash or any other means of paying rent for the month of April when he went downstairs to collect it. Conversely, the tenant testified that he went to the ATM, took out \$800.00 cash and offered it to the landlord which the landlord refused to take.

I find, on a balance of probabilities, the landlord's version of the facts most likely to be true. The reason a landlord rents out a portion of his home is to generate income from it. It would be both illogical and irrational to refuse to take rent money from the tenant who tries to give it to him, even if the landlord is seeking to end the tenancy. Both parties agree that the landlord wanted the tenancy to end at the end of April and I find it reasonable that the landlord would offer the tenant a return of the (paid) April rent as an incentive for the tenant to move. I simply do not accept the tenant's version of facts stating that the landlord refused to accept the \$800.00 cash offered as rent for April.

Section 26 of the Act is clear: 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. The tenant acknowledged that rent was not paid for the month of April, 2021 or any month thereafter. I find the tenant had no right to deduct all or a portion of the rent due and owing to the landlord. The tenant is in breach of section 26 of the Act.

As the tenant has not paid the outstanding rent within 5 days of receiving the Notice as required by section 46(4) of the Act, I uphold the landlord's 10 Day Notice to End Tenancy issued on April 4, 2021.

Section 55 states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the landlord's notice to end tenancy and find it complies with section 52 of the Act in terms of form and content. I issue an order of possession in favour of the landlord effective 2 days after service upon the tenant.

I find that the tenant was obligated to pay rent in the amount of \$800.00 per month to the landlord and failed to do so. Pursuant to section 67 of the Act, I award the landlord a monetary order for rent from April 1, 2021 to the date of this decision, August 6, 2021. August's rent will be prorated on a per diem rate of  $[\$800.00 / 31 \text{ (days)} \times 6 \text{ (days)} = \$154.83]$ .

The landlord is also entitled to recover the filing fee of \$100.00 as the application was successful.

The landlord continues to hold the tenant's security in the amount of \$400.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
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April rent	\$800.00
May rent	\$800.00
June rent	\$800.00
July rent	\$800.00
August rent	\$154.83
Filing fee	\$100.00
Less security deposit	(\$400.00)
<b>total</b>	<b>\$3,054.83</b>

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 in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$3054.83**.

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: August 06, 2021

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Residential Tenancy Branch