



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent VN. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Preliminary Issue – End of the tenancy

At the outset of the hearing the tenant affirmed she moved out on May 27, 2021.

The application for an order for the cancellation of the Notice and for an order for the landlord to comply with the Act is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for the cancellation of the Notice and for an order for the landlord to comply with the Act.

I note that section 55(1.1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

(1) 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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

### Issues to be Decided

Is the tenant entitled to:

1. a monetary order for compensation?
2. an authorization to recover the filing fee for this application?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on July 23, 2020 and ended on May 27, 2021. Monthly rent was \$1,700.00 and parking was \$35.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$850.00 and a pet damage deposit of \$850.00 were collected and the landlord holds in trust the security and pet damage deposits in the total amount of \$1,700.00.

The tenant submitted a partial copy of the Notice.

The tenant affirmed she is not seeking a monetary order for compensation. The tenant withheld rent in the monthly amount of \$225.00 from October 2020 to April 2021 in the total amount of \$1,785.00 because heat was included in the tenancy agreement and the rental unit was not heated. The tenant is seeking an order to declare that she does not owe \$1,785.00 to the landlord.

The landlord affirmed the tenant could not withhold rent.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Per section 7 of the Act, the landlord or the tenant can submit an application for monetary compensation. The tenant's claim for an order to declare that she does not owe \$1,785.00 to the landlord is not provided under the Act.

As such, I dismiss the tenant's application without leave to reapply.

I cannot issue a monetary order for unpaid rent under section 51(1.1) of the Act because a complete copy of the Notice was not submitted into evidence and I cannot confirm if the Notice complies with section 52 of the Act.

The tenant must bear the cost of the filing fee, as the tenant was not successful in her application.

Both parties are at liberty to submit monetary claims regarding the tenancy.

Conclusion

I dismiss the tenant's application 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: September 24, 2021

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Residential Tenancy Branch